114-663

VOL. 2.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 480. 163

CALVIN AMORY STEVENS

Appellant,

vs.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF TENNESSEE.

FILED NOVEMBER 16, 1881.

1

Deposition of Adolph Schreiber.

UNITED STATES CIRCUIT COURT,

FOR THE WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, for himself and others, *vs.* THE CHICAGO, ST. LOUIS and NEW ORLEANS RAILROAD COMPANY, et als.	In Equity No. 317. 2

Deposition of ADOLPH SCHREIBER, taken by consent of solicitors for the complainant and defendants, taken at New Orleans, Louisiana, on behalf of the defendants. 3

Witness, being first duly sworn to speak the truth, deposes and says:

My name is ADOLPH SCHREIBER. I am a merchant and reside and carry on business in New Orleans, Louisiana. I am one of the trustees under the first mortgage deed, dated 8th November, 1877, made by the Chicago, St. Louis and New Orleans Railroad Company, to secure the issue of thirteen millions of dollars. I and my co-trustees have certified and handed over to said company for sale, between the 4 date of said mortgage until the present time, bonds issued thereunder to the extent of three million

three hundred and thirty-two thousand dollars. Included in this amount were bonds to the amount of one million one hundred and ninety-nine thousand dollars, which were known as substitution bonds, carrying with them the lien of the State of Tennessee. All of these latter bonds have been sold by tne Chicago, St. Louis and New Orleans Railroad Company at prices varying from 85 per cent and interest to 105 per cent.; the bulk of these last named bonds were sold by said company in the years 1877 and 1878, and prior to the 24th January, 1879. Subsequent to this date one hundred and twenty-five thousand dollars of said bonds were sold. In addition to these substitution bonds the Chicago, St. Louis & New Orleans Railroad Company have sold two millions one hundred and thirty-three thousand of the bonds secured by the said mortgage. Those sales were made at different times in the years 1878, 1879 and 1880, and at prices varying from 95 to 111 per cent.

The bonds so sold by the St. Louis, Chicago and New Orleans Railroad Company, are in the hands of a large number of holders, scattered over different parts of the United States and in Europe.

A. SCHREIBER.

Subscribed and sworn to before me this 26th day of August, 1880.

K. LOEW,
Comm'r.

U. S. CIRCUIT COURT,

DISTRICT OF LOUISIANA.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
City of New Orleans.

I, K. LOEW, United States Commissionr for Louisiana; do hereby certify that the foregoing two pages of the deposition of Adolph Schreiber were

taken before me to-day, and that said witness, after having the same read over to him, did subscribe his name thereto, and on oath depose and say that the same was true. 9

In witness whereof, I have hereunto set my hand and official seal, this 26th day of August, 1880.

K. LOEW,
Commissioner U. S. Circuit Court,
District of Louisiana.

[Endorsed]—No. 317, Circuit Court of the United States, Western District of Louisiana. C. A. Stevens *et al. v.* Chicago, St. Louis & N. O. R. R. Co. Deposition of A. Schreiber. Filed Sept. 20, 1880. Bell W. Ethridge, Clerk. W. B. Weisiger, D. C. 10

11

12

IN THE UNITED STATES CIRCUIT COURT,

FOR THE WESTERN DISTRICT OF TENNESSEE.

1

CALVIN AMORY STEVENS, for himself and others *vs.* THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY, *et al.*	In Equity. No. 317.

2

Deposition of Samuel B. McConnico, taken by consent of solicitors for the complainants' and defendant, at New Orleans, Louisiana, in behalf of the defendants.

Witness first being duly sworn to speak the truth, deposes and says:

My name is Samuel B. McConnico; I reside in 3
New Orleans, Louisiana; was auditor of the New Orleans, St. Louis and Chicago Railroad Company, for some time prior to the commencement of the suit for foreclosure under which the company's road was sold, and have been auditor for the Chicago, St. Louis and New Orleans Railroad Company since that time. The Receiver appointed by the State of Tennessee took possession of that part of the road of the first named company lying in the State of 4
Tennessee on 1st March, 1876, and gave up posses-

5 sion of the same on 31st December, 1877. I have not the whole of the receiver's books in my possession, but from the figures at my command, I am enabled to estimate that the receiver expended on so much of said road as laid in the State of Tennessee in the way of repairs, betterments and new construction from 1st March, 1876, to 31st December, 1876, the sum of $85,000. I have fuller accounts for the year 1877, and can state that the receiver expended in that year, in the same way, the sam of $133,828,74,
6 making the receiver's total expenditures from 1st March, 1876, to 31st December, 1877, for repairs, betterments and new construction the sum of $218,-828.74. From 1st January, 1878, to 31st January, 1879, the Chicago, St. Louis and New Orleans Railroad Company expended upon so much of the road as laid in Tennessee the sum of $218,340.68 for repairs, betterments, steel rails, new construction, &c., thus making the total expenditures in this respect from 1st March, 1876, to 31st January, 1879, to be
7 the sum of $437.169.42. From 1st February, 1879, to 30th June, 1880, the said company have also expended in the same way for repairs, betterments, steel rails, new construction, &c., the further sum of $288,054.04.

S. B. McCONNICO.

Sworn to and subscribed before me this 27th day of August, 1880.

F. A. WOOLFLEY,
8 Commissioner U. S. Circuit Court,
District of Louisiana.

STATE OF LOUISIANA,
PARISH OF ORLEANS,
City of New Orleans, } ss.:

I, FRANCIS A. WOOLFLEY, United States Commissioner for the Circuit Court of the District of Louis-

iania, do hereby certify that the foregoing two pages 9
of the deposition of Samuel B. McConnico was taken before me to-day, and that said witness, after having the same read over to him, did on oath depose and say the same is true.

In witness whereof, I have hereunto set
[L.S my hand and official seal this 27th
day of August, 1880.

F. A. WOOLFLEY,
Clerk U. S. Circuit Court,
District of Louisiana. 10

Endorsed: No. 317.

C. A. STEVENS, *et al.*, *vs.* CHICAGO, ST. LOUIS AND N. O. R. R Co. } Deposition of S. M. McConnico.

Filed Sept. 20th, 1880.
BELL W. ETHERIDGE, Ck.
W. B. WEISEGER, D.C.

11

12

1

U. S. Circuit Court,

SIXTH JUDICIAL CIRCUIT,

WESTERN DISTRICT OF TENNESSEE.

2

CALVIN AMORY STEVENS, on behalf of the holders of Internal Improvement Bonds, issued to the MISSISSIPPI CENTRAL RAILROAD COMPANY,

vs.

THE CHICAGO, ST. LOUIS & NEW ORLEANS RAILROAD COMPANY, et al.

3

Replication of complainants to the answer of defendants.

Repliant, saving and reserving unto himself, now and at all times hereafter, all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereto, says he will 4 ever maintain and prove his said bill of complaint to be true, certain and sufficient in law to be an-

5 nexed unto, and that said answer of the defendants is uncertain, untrue and insufficient to be replied thereto by repliant, without this, that any other matter or thing whatsoever in the said answer contained material or effectual in law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable Court shall direct, and
6 humbly prays, as in his original bill he has already prayed.

E. L. ANDREWS,
GEO. HOADLY,
L. & E. LEHMAN,
Compt's Solrs.

7

8

1

U. S. Circuit Court,

WESTERN DISTRICT OF TENNESSEE.

CALVIN AMORY STEVENS, on behalf of the holders of bonds of the STATE OF TENNESSEE, issued to the MISSISSIPPI CENTRAL and TENNESSEE RAILROAD COMPANY to the MISS. CENTRAL R. R. Co.,

2

vs.

THE CHICAGO, ST. LOUIS and NEW ORLEANS RAILROAD COMPANY *et al.*

3

To the Honorable E. S. HAMMOND, Judge, etc., presiding in the Circuit Court of the United States for West Tennessee :

The petition of the Illinois Central Railroad Company, a corporation chartered by and having its domicil in the State of Illinois, shows to your Honor that it is advised that complainant in his bill of complaint heretofore filed in this cause alleges that at divers times therein set forth, the State of Tennessee loaned to the Mississippi Central and Tennessee R. R. Co., and to the Mississippi Central 4

5 Railroad Company, six per cent. coupon bearing bonds of said State, to an amount aggregating $1,-124,000.00, and that said bonds were so loaned under the Internal Improvement Act of the Legislature of said State, passed February 11th, 1852, and the acts amendatory thereof.

Petitioner is further advised that complainant in his said bill asserts that under and by virtue of the terms of said act of February 11th, 1852, and acts amendatory thereof, a lien was retained upon that
6 part of the road of said Mississippi Central and Tennessee and Mississippi Central Railroad, the latter being the successor of the former, situated in said State, to secure and make certain the payment of the interest falling due from time to time on said bonds, and the principal of said bonds when they matured, and that said lien inured to and was for the benefit of the holders of said bonds. Petitioner is also informed that complainant claims to be a holder of said
7 bonds; alleges that there is a large amount of interest due in the same remaining unpaid, and asks to have said lien enforced, and that in the meantime, that a receiver be appointed to take charge of and operate the property embraced in said lien. Petitioner further shows that said Mississippi Central Railroad Company extended from New Orleans, Louisiana, to the Ohio river opposite Cairo, Illinois, through the States of Kentucky, Tennessee, Mississippi and Louisiana; that the railroad franchises,
8 &c., of said company were sold under foreclosure of mortgage by the United States Circuit Courts of Mississippi, Tennessee and Kentucky at public outcry, and the same was at such sale purchased by certain persons who, under authority of law, were organized into a body politic and corporate by the name of the Central Mississippi Railroad Company, and that said last named corporation was consolidat-

ed with a corporation of Mississippi and Louisiana, 9
known as the New Orleans, Jackson and Northern Railroad Company into the defendant, the Chicago, St. Louis and New Orleans Railroad Company, on the 7th day of November, 1877, which said last named company was on that day incorporated and became the owner of said railroad, extending from New Orleans, Louisiana. through the State of Illinois to Cairo, Illinois, and has ever since continued to own and hold the same.

Petitioner further shows that on the 8th day of 10
November. A. D. 1877, the said Chicago, St. Louis and New Orleans Railroad Company, together with said Central Mississippi Railroad Company and New Orleans, Jackson and Northern Railroad Company, jointly executed their deed of trust or mortgage to L. V. F. Randolph, then and now a citizen and resident of the State of New York, James Fentress of Bolivar, Tennessee, and August Schreiber of New Orleans, Louisiana, upon and to said railroad, together with all branches, equipments, 11
franchises &c., for the purpose of securing and making certain the payment of an issue of thirteen thousand bonds by said Chicago, St. Louis and New Orleans Railroad Company, of one thousand dollars each. Said issue aggregating thirteen millions of dollars. That it was therein provided that eleven hundred and ninety-nine of said bonds should be, and the same were in fact set apart and used for the purpose of providing means to pay
said State of Tennessee the amount due her by 12
reason of the loan of her bonds to the said Mississippi Central and Tennessee Railroad Company and Mississippi Central Railroad Company under said Internal improvement laws. Said bonds so set apart and so used being numbered from one to one thousand one hundred and ninety-nine inclusive; that all of said issue of thirteen thousand bonds by

said Chicago, St. Louis and New Orleans Railroad Company were by the terms and provisions of said deed in trust placed upon an equality so far as regarded security upon the entire road and other property of said Company, except said one thousand one hundred and ninety-nine bonds so used as aforesaid—which besides and in addition were declared to be substituted to and entitled to have the benefit of the statutory first lien or mortgage which the said State of Tennessee had under the said act of February 11th, 1852, and acts amendatory thereof—in preference to the residue of said issue of bonds and to all other obligations whatever—and that said deed of trust purported to and did secure all of said bonds by a first mortgage on the entire road and other property of said Company—the same being asserted to be superior to all other incumbrances whatever. Petitioner further shows that said bonds of the Chicago, St. Louis and New Orleans Railroad Company so secured as aforesaid,—were shortly after the execution and delivery of said deed, sold to bona fide purchasers for full value, without notice of any other claim or incumbrance than that set forth in said deed in trust, and are now held by such purchasers. Petitioner further shows that it is the owner and holder of five millions and twenty-three thousand dollars of said bonds, four millions nine hundred and eighty-three thousand dollars of which it has owned and possessed prior to any notice of any claim on the part of complainant or his associates as set forth in his said bill of complaint; said bonds having been purchased by petitioner in good faith and for full value. Petitioner shows that said bonds so held by it, by the terms of said deed in trust purport to be, and are secured in part, by a first mortgage upon the same property, upon which complainant claims a lien, and seeks in

the bill of complaint filed herein to have subjected 17
to his claim. Petitioner is advised that the effect of maintaining said claim would be to affix a first lien or mortgage in favor of complainant and other holders of Tennessee bonds so issued as aforesaid, and *pro tanto* to impair and wrest from petitioner the security given by said companies, as aforesaid, to make certain the payment of the interest and principal of the said issue of bonds by the said Chicago, St. Louis & New Orleans Railroad Company, so held and owned as aforesaid by the peti- 18
tioner and others, and, therefore, that it is both a proper and necessary party to the litigation, between complainant and said Chicago, St. Louis & New Orleans Railroad Company.

The premises considered, petitioner prays that it may be made a party defendant to said cause—the same being numbered 317 in the Equity docket of this Honorable Court, and that it may be allowed to file its answer to the bill of complaint heretofore filed in said cause, and 19
in all respects be placed upon the same footing in the cause as though it had been a party defendant ab initio. And to that end that the Court will make such orders as may be meet and proper in the premises.

The Illinois Central Railroad Company, by
JAMES FENTRESS & B. F. AYER,
Solicitors.

Endorsement:

Circuit Court of the United States, Western Dis- 20
trict of Tennessee.

CALVIN A. STEVENS
vs.
CHICAGO, ST. LOUIS and NEW ORLEANS R. R. Co. *et al.*
} Petition of Ill. Cent. R. R. Co.

Filed Apl. 24, 1880.
Bell W. Etheridge, Clk.
W. B. Weisiger, D. C.

21

Order.

On petition and motion of the Illinois Central Railroad Company by their solicitor, to be made defendants in this cause, and production of their answer, and the counsel of complainants consenting thereto, and it appearing to the Court that said company is a proper party defendant in this suit, it is ordered that said Illinois Central Railroad
22 Company be made a party defendant in this cause and have leave to file their answer to the Bill in this cause, which is accordingly done. Said answer to be filed as of April 7, 1880, and that this order be entered as of that date. It is further agreed and ordered that the testimony already taken in this cause may be used as if the Illinois Central Railroad Company had been made a party defendant and filed its answer at the time original defendants answered. It is by consent of parties
23 ordered that the said answer herein stands as if complainants had filed their formal replication thereto and issues joined thereon with the effect of such formal replication regularly filed thereto.

Dated April 24, 1880.

24

Exhibit No. 1 to C., St. L. & N. O. Answer.

This indenture, executed by JOHN NEWELL, of the State of Illinois, and JUNIUS B. ALEXANDER of the State of New York of the first part; THE MISSISSIPPI CENTRAL RAILROAD COMPANY, THE SOUTHERN RAILROAD ASSOCIATION and THE NEW ORLEANS, ST. LOUIS AND CHICAGO RAILROAD COMPANY, of the second part; WILLIAM H. OSBORN, LEWIS E. SIMONDS, BENJAMIN F. AYER, CONSTANTINE MENELAS, WILLIAM ALEXANDER GORDON and JOHN DUNN of the third part; and G. R. HILL, Special Master in Chancery of the Circuit and District Courts of the United States, hereinafter mentioned, of the Fourth Part: Witnesseth:

That Whereas, The Mississippi Central Railroad Company, a corporation existing under the laws of the States of Mississippi, Tennessee and Kentucky, and the Southern Railroad Association, a corporation existing under the laws of the States of Tennessee and Mississippi, did execute a mortgage or deed of trust under authority from these States, respectively, bearing date the first day of May, 1872, by which the said corporations granted and conveyed the dominion and estate, right and claim of the said corporations in perpetuity to John Newell, Junius B. Alexander and Edmond J. Forstall, the survivors and successors of them, over, in and to the railroad of the said corporations within and from the town of Canton in the State of Mississippi, and within the

States of Mississippi and Tennessee, to and within the town of Jackson in the State of Tennessee, and its proposed extension therefrom to the left bank of the Ohio River near Cairo, Illinois, with all the franchises of The Mississippi Central Railroad Company, all lands, railroad tracks, sidings, rights and privileges, station-houses and grounds, depots and depot-grounds, machine-shops and machinery used in or in connection therewith, engines, cars, rolling-stock and apparatus of every description used in connection with said railroad, and all that thereafter should be acquired in any manner in the continuance of the said road to the Ohio River and its operation whatsoever, including and intending to include all of its real and personal estate and franchises, then owned or to be acquired, without exception or reservation, and including and intending to include all that part of said railroad from the town of Jackson in the State of Tennessee, to the Kentucky line, and from thence to Fillmore, in the State of Kentucky, as now constructed, together with all the franchises and property, real and personal, of the said corporations in the State of Kentucky whatsoever.

And whereas the said mortgagors, the Mississippi Central Railroad Company, and the Southern Railroad Association, did then and thereby covenant with the said Newell, Alexander and Forstall, and the survivors and successors of them, to make, execute and deliver all and every conveyance, assurance or transfer for the better and more effectually vesting and confirming in them and their successors, the franchises and real and personal estate granted or intended to be granted to them by said deed of trust as aforesaid.

And whereas, the conveyance aforesaid, and the covenants therein did and were designed to create a mortgage lien and incumbrance on all of the said

railroads and their appurtenances and all 9
the rights, estates, interests and real and personal
property as aforesaid, to secure the payment by the
terms thereof of an uniform series of bonds of the
same date as the deed aforesaid, all of one thousand
dollars each, with coupons for semi-annual interest
of thirty-five dollars each attached, payable on the
first day of January and July of every year until
the first day of January, 1912, in gold coin, and
with the condition to be void, if the same was faith-
fully paid ; but on the contrary, if there was a con- 10
tinuing default for six months, either in the pay-
ment of the principal or interest, then the said New-
ell, Alexander and Forstall, or the survivors, upon
the requirement of the holders of one hundred
bonds described in the deed, might take measures
for the enforcement of the trusts of the deed as a
security, according to its terms, all of which fully
appears in the original Deed of Trust, executed by
The Mississippi Central Railroad Company and
The Southern Railroad Association, on the first day 11
of May, 1872, to said Newell, Alexander and For-
stall aforesaid, and which is registered in the Reg-
ister's offices in the several counties in Mississippi,
Tennessee and Kentucky, through or in which said
railroad is constructed.

And Whereas, after the making and delivery of
the deed aforesaid and the issue of above three thou-
sand of the bonds described, to wit: In the year
1874 the said Missisippi Central Railroad Company,
with the express consent of the Southern Railroad 12
Association, under authority granted by the States
aforesaid, was consolidated with the New Orleans,
Jackson and Great Northern Railroad Company,
and the two corporations conducted their business
under the name of the New Orleans, St. Louis and
Chicago Railroad Company, which assumed their
several obligations and duties ; and the said several

corporations did omit and refuse to pay the coupons of interest which became due on the bonds mentioned in the said deed on the first day of November, 1874, and the default arising from said failure and refusal, as well as from the failure and refusal to pay the coupons of interest on said bonds which matured on the 1st of May, 1875, continued for more than six months from those dates severally, and the holders of more than two thousand four hundred and twenty of said bonds did require of said John Newell and Junius B. Alexander, the surviving trustees (Edward J. Forstall being dead) to proceed to foreclose the said mortgage, and to enforce the trusts and covenants in the said deed for the disposition of all the rights, estates and claims thereon, for the purpose of obtaining the payment of the debt fully set forth therein, and the said John Newell and Junius B. Alexander surviving trustees as aforesaid, pursuant to the requirement of the bondholders, did institute a suit in the Circuit Court of the United States for the Southern District of Mississippi, at Jackson, Mississippi, in connection with the Illinois Central Railroad Company (one of the bondholders), on the 6th day of March, 1876, against the Mississippi Central Railroad Company, the Southern Railroad Association, the New Orleans, St. Louis and Chicago Railroad Company and others, to enforce the trusts aforesaid, and did move in said Court for the appointment of a Receiver and an injunction, which were granted on the 11th day of March, 1876, and the said Junius B. Alexander as Receiver so appointed as aforesaid did take possession of the said railroad in Canton, Mississippi, and from thence through the States of Mississippi and Kentucky to Fillmore, Kentucky, with all of the extensions thereof, with the rights of way, all lands that were owned at the date of the deed, or which had

been acquired, and the property, franchises, rights, 17
appurtenances, depots, cars, locomotives, shops,
machine-shops, fixtures, utensils, and real and per-
sonal property of said railroad company (except
that portion of said railroad and its equipment ly-
ing within the State of Tennessee, which he was
authorized by said decree to take charge of also,
but was prevented by the fact that the State of
Tennessee, on account of a default of said company
to said State in the payment of interest and Sink-
ing Fund upon the amount of State Bonds issued 18
to said railroad to build and repair the same, had
previous to his appointment, taken possession
thereof by its receiver, to be held until said interest
and Sinking Fund should be paid), and the said re-
ceiver (with the exception aforesaid), retained all
of said property in custody to abide the order of
the Court in said cause until the final decree in the
same, and by the decree rendered at the regular
term of said Court, on the 22d day of December,
1876, the Court declared and decreed that the said 19
deed was a valid and operative conveyance of the
property and estates therein described and set forth
by the said corporations in the deed aforesaid, and
confirmed the title of said Newell and Alexander,
trustees as aforesaid, therein, and that the said de-
fendants had broken the conditions of the deed and
that the plaintiffs were entitled to a decree accord-
ing to the prayer of the bill for the sale of said
property and estates, so as to provide for the pay-
ment of the interest found to be due, and the Court 20
ordered that, unless the defendants should pay said
past due interest, amounting to four hundred and
sixty-two thousand nine hundred and eighty-nine
and $\frac{3}{100}$ dollars in gold coin of the United States,
and the costs of the suit, on or before the 15th of
January, 1877, then that the said plaintiffs, Newell
and Alexander, under the directions of the Master

of this Court appointed for the cause might proceed to advertise the property for sale in the manner specified in the decretal order of this Court as aforesaid, at a day to be designated by the Master in the City of Jackson, in the State of Mississippi, before the door of the Court House of the Circuit Court of the United States, between the hours of noon and three o'clock P. M. of such day, and the said John Newell and Junius B. Alexander, surviving trustees as aforesaid, and the Illinois Central Railroad Company, in March, 1876, commenced three several ancillary suits against the same corporations, the one in the District Court of the United States for the Northern District of Mississippi, at Oxford; another in the Circuit Court of the United States for the District of West Tennessee, at Memphis, and the third in the Circuit Court of the United States for the District of Kentucky, at Paducah, Ky., for the same cause of suit and to obtain the same relief as in the cause before-mentioned, and the said Courts each made the same orders and directions of sale as are contained in the aforesaid decree, and that it should be conducted in the same manner as to time, place notice and superintendence, adopting the said decree in its several dispositions.

And whereas, the said John Newell and Junius B. Alexander, surviving trustees as aforesaid, under the directions and superintendence of the said Master G. R. Hill did advertise the said property in the manner following, to wit:

Notice of adjourned sale of Mississippi Central Railroad—Circuit Court of the United States for the Southern District of Mississippi—John Newell and J. B. Alexander, surviving trustees, etc., and the Illinois Central Railroad Company vs. Mississippi Central Railroad Company, New Orleans, St. Louis

and Chicago Railroad Company, Southern Railroad 25
Association and others. Under and by virtue of the power and authority conferred by the Circuit Court of the United States for the Southern District of Mississippi, in a decree rendered in the above-entitled cause on the 22d day of December, 1876; and also by virtue of a decree of the United States Court for the Western District of Tennessee, between the parties aforesaid and others, rendered on the 6th day of January, 1877; and by virtue of a decree entered on the 5th day of January, 1877, in 26
the Circuit Court of the United States for the District of Kentucky, at Paducah, between the parties aforesaid; and by virtue of a decree entered in the District Court of the United States for the Northern District of Mississippi, between the above-named parties and others on the 17th day of January, 1877, and under and by virtue of the terms of the deed of trust, established in said decrees as made by the Mississippi Central Railroad Company in favor of Edmond J. Forstall, John Newell and Junius B. 27
Alexander, their successors and assigns, bearing date the (1st) first day of May, 1872, and to provide for the payment of the debts therein described: We, the undersigned surviving trustees, will sell at public auction to the highest bidder, under the superintendence and direction of G. R. Hill, special master in the above-entitled causes, as provided and directed in the said decrees, the entire property embraced in the said deed of trust, at the City of Jackson, Miss., before the door of the Court-house 28
of the Circuit Court of the United States in Jackson, Miss., between the hours of noon and 3 o'clock P. M., on Thursday, the twenty-third (23d) day of August, A. D. 1877, the property described in the said decrees and the deed of trust aforesaid, being the railroad of the said corporation (the Mississippi Central Railroad Company) and of the New Orleans,

St. Louis and Chicago Railroad Company, commencing in the City of Canton, in the State of Mississippi, and extending northwardly through Mississippi and Tennessee to Jackson, Tennessee, and its extension therefrom through Tennessee and Kentucky to the left bank of the Ohio River opposite Cairo, Ill., with all the extensions and branches thereof, with all the franchises of the said Mississippi Railroad Company, including the franchises existing at the date of said deed of trust aforesaid, as well as those acquired by any subsequent legislation or otherwise, and the franchise for uniting, connecting and consolidating with other corporations; together with all of the lands, railroad tracks, sidings, rights, privileges and immunities, station houses and grounds, depots and depot grounds, machine-shops and machinery used in or in connection with the same; all engines, cars, rolling stock and apparatus of every description used on or in connection of said railroad, or which has been acquired, and all the stock of said corporation or its successor remaining unsold or held for such corporation; and all the repair shops, business houses, offices, buildings and furniture, fuel and all materials used for the operation and business of the road; car houses, freight houses, and all lands, and all and every other kind and description of rights, powers, privileges, immunities, titles, legal and equitable, and property of all kinds covered by said deed of trust aforesaid, with the power to operate said road and to collect the income, rents and tolls therefrom, and all the right, title and estate of the said corporation and its assigns as fully as the same are granted in the deed of trust aforesaid, or the decree of the Courts aforesaid.

The sale of said property to be made in bulk for cash to the highest bidder at the time of sale. The

right of the bondholders to purchase the said property is reserved in the decree. 33

JOHN NEWELL,
JUNIUS B. ALEXANDER,
Surviving Trustees.

G. R. HILL,
Special Master.

N.P.—Inventories of the property as far as ascertained have been filed in the United States Circuit Court, at Jackson, Miss., aforesaid, which can be 34
seen on application to the Clerk of said Court, and said advertisement was published daily from the 11th day of June, 1877, until the day of sale, in the Jackson Times, a newspaper published in Jackson, son, Mississippi, and three times a week in the New York "Tribune" and "World," papers published in the City of New York, and in the New Orleans "Times," published in New Orleans, Louisiana, for eight weeks, from the 11th day of June, 1877, and on the day of sale, to wit.; on the 23d of 35
August, 1877, between the hours aforesaid, the said property and franchises were offered for sale to the highest bidder in bulk for cash, in the presence and under the superintendence of the master aforesaid, and in the presence of the solicitor of the trustees, and in compliance with the terms of the said decrees, and at the sale, William H. Osborn, Lewis E. Simonds, Benjamin F. Ayer, Constantine Menelas, William Alexander Gordon and John Dunn, a purchasing committee appointed by the holders of a 36
majority of the bonds were the highest bidders, and the said property and franchises were adjudicated to the said parties for the sum of four hundred and twenty-five thousand dollars at the said sale.

Now these presents witness that under the power and authority granted to them by the terms of the decree on the 22d of December, 1876, aforesaid, and

under the powers conferred by the deed, and under all the powers vested in them by each of the said several decrees at Oxford, at Memphis, and at Paducah, aforesaid, in said ancillary suits between the said parties, and for the same cause, and in which decrees to the same effect and the same directions made to the said Trustees, and upon the consideration of the payment made by the said parties of the third part in conformity with the said decrees. We, the said John Newell and Junius B. Alexander, the parties of the first part, do grant, bargain, sell, alien and convey to the said parties of the third part, and the survivors of them, in fee simple, all the railroad of the Mississippi Central Railroad Company within the town of Canton, in the State of Mississippi, and from thence to, and within the town of Fillmore, in the State of Kentucky, including the whole line of said railroad in Mississippi and Tennessee and Kentucky, with all of its extensions, branches, side tracks and spurs, thereto made or authorized to be made, in either of said States, with all of its rights of way, lands, property, franchises, rights and appurtenances, with the buildings, structures and improvements on the same, or pertaining thereto, and all and singular the cars, locomotives, engines, warehouses, depots, machine shops, and machinery, fixtures, utensils and effects of every kind, nature and description, in use upon said railroad, or in anywise connected with or belonging thereto, and all the real and personal estate and franchises, whether owned or acquired at the date of the said Deed of Trust on the 1st day of May, 1872, or since that day, and subject to the terms of the said Deed of Trust and the covenantos therein for further assurance and conveyance, and including the franchise to be a corporation, and to form a connection with other railroad companies,

and especially the property, estate, right and in- 41
terests in all the property embraced in the inventories filed by the Receivers in the Circuit Court of the United States, in and for the Southern District of Mississippi, a portion of which is set out in Schedule A, attached to this Deed, including herein also all and any right, title, claim and interest which the Southern Railroad Association had at the time of the execution of said Deed of Trust, or has since acquired, in and to any of the property or franchises or rights herein intended to be con- 42
veyed, and also all the right, title, claim and interest we derive from the said Deed of Trust and the decrees of said courts to any property whatsoever, whether real or personal.

To have and to hold to them, the said parties of the third part, to wit: William H. Osborn, Lewis E. Simonds, Benjamin F. Ayer, Constantine Menelas, William Alexander Gordon and John Dunn, and the survivors of them, in full property and dominion to them and their heirs. 43

And the said parties of the third part do accept the said deed of conveyance, and transfer from the said John Newell and Junius B. Alexander, and all the rights, estates, interest claims, and property movable and immovable upon the terms and conditions they have declared in the said deed.

And the parties of the second part, the Mississippi Central Railroad Company, the Southern Railroad Association, and the New Orleans, St. Louis and Chicago Railroad Company, par- 44
ties to the suits in the United States Courts aforesaid and to the decrees therein mentioned, and acknowledging their obligations under the terms of the said decrees and of the deed of trust herein recited and identified and the covenants and stipulations in the said deed to make further assurances and conveyances to give effect to the

said deed of trust, do ratify and confirm and forever release and quit claim to the said parties of the third part, William H. Osborn, Lewis E. Simonds, Benjamin F. Ayer, Constantine Menelas, William Alexander Gordon, and John Dunn, all of the railroads, extensions of railroads, and their appurtenances, and all the rights to property, whether real or personal, hereinbefore mentioned, and all of the franchises and privileges embraced in the said deed as fully and particularly as they have been conveyed in this deed by the parties of the first part. And I, the said G. R. Hill, Special Master, appointed by the United States Courts aforesaid in the cause aforesaid, do hereby certify and declare that the sale ordered to be made by the Courts aforesaid was conducted under my superintendence and according to the terms of the decrees, and that the solicitor of plaintiffs was present, and that the same was made pursuant to all the directions of the Court, and that the parties of the third part were duly and properly adjudicated to be the purchasers and have complied with all the terms and conditions of the sale by the adjustment of the price, without detriment, however, to the rights of the holders of securities issued and validly existing under the prior mortgages, described in the deed of trust, and to the statutory mortgage and lien of the State of Tennessee, as set forth in the decretal order of the Court authorizing and directing the sale aforesaid.

In witness whereof the said several parties of the first, third and fourth parts have hereunto subscribed their names and affixed their seals, and the said parties of the second part have caused their respective corporate seals to be hereunto affixed and these presents to be signed by their respective Presidents and Secretaries, this the eleventh day of

September, in the year of our Lord, one thousand eight hundred and seventy-seven. 49

(sd.) JOHN NEWELL. [L. S.]
(sd.) J. B. ALEXANDER. [L. S.]

In presence of—
(sd.) WILLIAM H. CLARKSON.
(sd.) CHARLES NETTLETON.

A. M. WEST,
President of the Mississippi Central Railroad Co.

R. P. NEELY,
Secretary of the Mississippi Central Railroad Co. 50

(sd.) H. S. McCOMB,
President S. R. R. Association.
(sd.) WM. CALHOUN,
Secretary S. R. R. Association.

In presence of—
(sd.) S. H. EDGAR.
(sd.) WM. J. MAURIAC,
[Seal of S. R. R. A.]

(Sd.) H. S. McCOMB, 51
Prest. N. O., St. L. & C. R. R. Co.

(Sd. WM. CALHOUN,
Secretary New Orleans, St. Louis & Chicago Railroad Company.

Seal of the New Orleans & Chicago R, R. Company.

In presence of
(Sd.) S. H. EDGAR. 52
(Sd.) WM. J. MAURIAC.

(Sd.) W. H. OSBORN, [L. S.]
LEWIS E. SIMONDS, [L. S.]
BENJAMIN F. AYER, [L. S.]
CONSTANTINE MENELAS, [L. S.]
WILLIAM ALEXANDER GORDON, [L. S.]
JOHN DUNN, [L. S.]

53 (Sd.) G. R. HILL, [L.S.]
Special Master.

In presence of
(Sd.) E. T. H. GIBSON,
(Sd.) ED. P. SKENE.

I certify that the erasures made in red ink on page 3, from line 26 to line 32 inclusive; and on pages 4, 5, 6 and 7, and on page 8 from line 1 to line 8 inclusive; and on page 16, from line 7 to line
54 20 inclusive; and on page 58, from line 1 to 6 inclusive, of the schedule hereto annexed, were made by me prior to the execution of this deed by H. S. McComb, president, and pursuant to the terms of the following telegram from E. C. Walthall to H. S. McComb:

"Sept. 14th, '77.

H. S. MCCOMB:

Fentress will telegraph Hill to strike out Torence lands and land in Holmes conveyed by West upon
55 your agreeing that the question may be submitted to the Court whether they ought to be included and to strike out Dupoyster deed absolutely.

E. C. WALTHALL."

The same in substance being confirmed by James Fentress.

Sept. 18th, 1877.

(Sd.) G. R. HILL,
Special Master.

56 It is agreed that this deed was properly executed and acknowledged by the parties, and registered in 1877 in all the counties in which any of the property was situate.

Exhibit No. 2.

THIS INDENTURE, made the sixth day of November, in the year of Our Lord one thousand eight hundred and seventy-seven, between WILLIAM H. OSBORN, LEWIS E. SIMONDS, BENJAMIN F. AYER, CONSTANTINE MENELAS, WILLIAM ALEXANDER GORDON and JOHN DUNN, parties of the first part, and the CENTRAL MISSISSIPPI RAILROAD COMPANY, party of the second part.

WITNESSETH, that whereas, at a public sale made in the City of Jackson, in the State of Mississippi, on the twenty-third day of August, in the year of Our Lord one thousand eight hundred and seventy-seven, pursuant to the certain several decrees of the Circuit Court of the United States for the Southern District of Mississippi, and of the Circuit Court of the United States for the District of West Tennessee, and of the Circuit Court of the United States for the District of Kentucky, at Paducah, and of the District Court of the United States for the Northern District of Mississippi, rendered in certain cause in equity therein pending, wherein John Newell and J. B. Alexander, and the Illinois Central Railroad Company were complainants, and the Mississippi Central Railroad Company, the Southern Railroad Association, the New Orleans, St. Louis and Chicago Railroad Company and others, were defendants, the railroad, lands, tenements, property, rights, franchises and effects hereinafter described were struck off and sold to the above-named parties of the first part, who had been duly appointed a purchasing com-

5 mittee to attend the said sale and purchase the said property in their own names, but for and in behalf of the holders of outstanding bonds of the said Mississippi Central Railroad Company, secured by and under a certain deed of trust made by said last named corporation in favor of Edward J. Forstall, John Newell and Junius B. Alexander, their survivors and successors, bearing date the first day of May, one thousand eight hundred and seventy-two, who were or should become subscriber to a certain
6 agreement, dated March 13th, 1877. A copy whereof was lodged with the Clerk of the Circuit Court of the United States for the Southern District of Mississippi, at Jackson, Mississippi, and filed with the papers and records of the above-mentioned cause.

AND WHEREAS, the sale made as aforesaid was afterwards duly confirmed by the said United States Circuit Court for the Southern District of Mississippi, at Jackson, and for the District of West Ten-
7 nessee at Memphis, and for the District of Kentucky at Paducah, and by the District Court of the United States at Oxford, and the property, rights, franchises and effects offered and struck off at the sale aforesaid were afterwards, pursuant to the decretal orders of said United States Circuit Court and District Courts, made and entered in the causes aforesaid, duly conveyed to the above-named parties of the first part by a certain indenture bearing date the eleventh day of September, 1877, made and
8 executed by and between John Newell and Junius B. Alexander of the first part, The Mississippi Central Railroad Company, The Southern Railroad Association, The New Orleans, St. Louis and Chicago Railroad Company of the second part, William H. Osborn, Lewis E. Simonds, Benjamin Fayer, Constantine Menelas, William Alexander Gordon and John Dunn, of the third part, and G. R. Hill,

Master of Chancery of the said Circuit and District Courts of the fourth part, which said indenture has been duly recorded in the Register's Office in the County of Madison, in the State of Mississippi.

AND WHEREAS, The bondholders, parties to said agreement of 13th March, 1877, for whom and in whose behalf the said parties of the first part purchased the said railroad and property and franchises hereinafter described, together with said parties of the first part, being the purchasers of said railroad and franchises, have organized into a corporation for the purpose of owning and operating said railroad by the name and style of the Central Mississippi Railroad Company, pursuant to an act of the Legislature of Mississippi, approved the 1st day of February, 1877, entitled "An Act to authorize purchasers of railroads under foreclosure of mortgages to organize as incorporated companies," and pursuant to an act of the Legislature of the State of Tennessee, approved the 16th day of March, 1877, entitled "An Act as to the sale of railroads under mortgage, granting certain powers to purchase and authorizing incorporation of purchasers," and pursuant to an act of the Legislature of Kentucky, approved March 1st, 1876, entitled "An Act to incorporate the purchasers of railroads."

AND WHEREAS, The said bondholders, assenting to and signing said agreement, dated March 13th, 1877, in whose behalf said railroad and franchises were purchased, as aforesaid, for the purpose of fully vesting in and assuring to the corporation so formed by them, and which is the party of the second part hereto, the title to said railroad, property and franchises, have requested the said parties of the first part to execute a deed of conveyance of said property and franchises to the party of the second part.

13 Now, THEREFORE, The parties hereto of the first part, for and in consideration of the premises, and of the sum of one dollar to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do hereby, at the instance and request of the bondholders subscribing the aforesaid purchasing agreement, dated March 13th, 1877, bargain, sell, grant, convey, transfer, assign and confirm unto the said party hereto of the second part, its successors and assigns, in fee simple,
14 all the railroad formerly belonging to the Mississippi Central Railroad Company or Southern Railroad Association, or both, commencing within the town of Canton, in the State of Mississippi, and extending thence northwardly through the States of Mississippi, Tennessee and Kentucky to the town of Fillmore, in the said State of Kentucky, together with all of its extensions, branches, side tracks and spurs thereto made or authorized to be made in either of said States, with all of its rights of way,
15 lands, property, franchises, rights and appurtenances, with the buildings, structures and improvements on the same, or pertaining thereto, and all and singular the cars, locomotives, engines, warehouses, depots, machine shops and machinery, fixtures, utensils and effects of every kind, nature and description in use upon said railroad, or in anywise connected with or belonging thereto, and all the real and personal estate and franchises, whether owned or acquired at the date of said deed of trust
16 of May 1st, 1872, or since that day, and subject to the terms of said deed of trust and the covenants therein, for further assurance and conveyance, including the franchise of the Mississippi Central Railroad Company, to be a corporation and to form a connection with other railroads and all the property, estate, right and interests in all the property embraced in the inventories filed by the Re-

ceivers in the Circuit Court of the United States in and for the Southern District of Mississippi, a portion of which is set out in Schedule A. in the deed to the parties of the first part hereto aforesaid, including also all the right, title or interest which the Southern Railroad Association or the New Orleans, St. Louis and Chicago Railroad Company had or has in or to any of the property, rights or franchises aforesaid. And especially all the estate, right, title and interest of the said parties hereto of the first part in and to all the property, real and personal, and the franchises, rights and privileges aforesaid; meaning and intending hereby to grant, convey and assign to the party hereto of the second part, its successors and assigns, all the Railroad property and all the real and personal estate, rights, privileges and franchises conveyed to the said parties of the first part by the deed aforesaid to them dated the eleventh day of September, 1877, and by the decrees of said Courts aforesaid without any exception or reservation.

Reference is here made to said deed last mentioned aforesaid for a more full and complete description.

TO HAVE AND TO HOLD all and singular the above granted premises and effects, with all the rights, franchises, privileges and appurtenances thereunto belonging and every part thereof unto the said party of the second part, its successors and assigns forever, as fully and absolutely as the said parties of the first part can grant, convey, transfer and assign and confirm the same—and the said parties of the first part, for themselves severally and respectively, and for their several and respective heirs, executors and representatives and not jointly or the one for the other, or

21 others for them, but each for his own acts only, covenant, promise and agree to and with the said party hereto of the second part, its successors and assigns, that they, the said parties of the first part, have not done or covenanted any act or thing whatsoever whereby the above granted premises or any part thereof is, are or shall, or may be impeached, charged or incumbered in any manner whatsoever.

PROVIDED ALWAYS, and these presents are upon
22 the express understanding and condition that nothing in this indenture contained shall be held to create against the said parties of the first part any covenant or warranty or title, except as against their own respective acts, and the said parties of the first part for themselves severally and not jointly, and for their several heirs, executors and representives, do further covenant, promise and agree to and with the said parties of the second part, its successors and assigns, that they, the said parties
23 of the first part and all persons hereafter claiming under them, will at any time hereafter at the request and expense of the said party hereto of the second part, its successors or assigns, make all such further assurances for the more effectually vesting and confirming the premsies hereby granted or so intended to be in and to the said party of the second part, its successors or assigns, or its or their counsel, learned in the law, shall be reasonably advised or required.

24

AND the said party of the second part accepts the aforesaid grant, conveyance, assignment and transfer, and in consideration thereof hereby covenants, promises and agrees to and with the said parties of the first part, their heirs, executors and representatives, to assumes perform and pay all the contracts, duties, liabilities and engagements of

every nature whatsoever for which the said parties of the first part have or may become liable in any manner connected with or growing out of or in way touching or concerning the operation or management of the said Railroad hereby conveyed while the same has been in their possession, or under their ownership or control, and that it, the party of the second part, will well and truly indemnify and save harmless the said parties hereto of the first part, of and from all actions, suits, costs, charges, damages and expenses whatsoever, for or by reason of any of the contracts, duties, liabilities or engagements aforesaid.

In witness whereof, the said parties hereto of the first part, have hereunto set their hands and seals, the said party of the second part has caused these presents to be subscribed by its President and Secretary, and its corporate seal to be hereunto affixed, the day and year first above written.

W. H. OSBORN, [L. S.]
L. E. SIMONDS, [L. S.]
B. F. AYER, [L. S.]
W. ALEX. GORDON, [L. S.]
JOHN DUNN, [L. S.]
C. MENELAS, [L. S.]

W. H. OSBORN,
President of the
Central Mississippi Railroad Company,
[L. S.] STUYVESANT FISH,
Secretary of the
Central Mississippi Railroad Company.

Signed, sealed and delivered in our presence by all,

W. W. FINLEY.

29 STATE OF LOUISIANA, }
City of New Orleans. }

On this 8th day of November, 1877, personally appeared before the undersigned, a duly appointed and qualified Commissioner for the State of Mississippi, in and for the State of Louisiana, and a duly appointed and qualified Commissioner of the State of Tennessee, in and for said State of Louisiana, and a duly appointed and qualified Commissioner for the State of Kentucky, in and for said State of
30 Louisiana, the above-named William H. Osborn, Lewis E. Simonds, Benjamin F. Ayer, Constantine Menelas, William Alexander Gordon and John Dunn, with each of whom I am personally acquainted, and also known to me to be the individualss described in and who executed the above instrument of writing, bearing date the 6th day of November, 1877, and respectively acknowledged, each for himself, that he signed, sealed and delivered the above instrument of writing as his volun-
31 tary act and deed on the day and year, and for the considerations, uses and purposes therein mentioned; also appeared before the undersigned at the same time and place, William H. Osborn, the President of the Central Mississippi Railroad Company, and Stuyvesant Fish. the Secretary of said Company, each of whom is to the undersigned personally known, and also known to be respectively such President and Secretary of said Company, and severally acknowledged that they signed, sealed
32 and delivered the above instrument in their said respective capacities as the corporate act and deed of said Company, on the day and year, and for the considerations, uses and purposes therein mentioned; that the seal thereto affixed is the corpor-

ate seal of said Corporation, and that it was affixed 33
by order of said Corporation.

Given under my hand and seals as Commissioner for the States aforesaid.

[L. S.] ANDREW HERO, JR., Commissioner,
Commissioner for Mississippi,
in and for Louisiana.

[L. S.] ANDREW HERO, JR.. Commissioner,
Commissioner for Tennessee,
in and for Louisiana. 34

[L. S.] ANDREW HERO, JR., Commissioner,
Commissioner for Kentucky,
in and for Louisiana.

STATE OF TENNESSEE, }
Obion County. }

I, JNO. E. EVANS, Register of said County, do certify, that the foregoing deed was filed in my office on the 26th day of November, at 10½ o'clock, 35
A. M., and noted in Note Book No. 3, page 10, and duly registered, together with Commissioner's Certificate of New Orleans, State of Louisiania, therein in Book Z, pages 556 to 561.

Given under my hand at Office in said County at Troy, this, the 27th day of November, 1877.

JNO. E. EVANS,
Register.

36

United States Circuit Court,

MIDDLE DISTRICT OF TENNESSEE.

In Equity.

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the LOUISVILLE AND NASHVILLE RAILROAD COMPANY,

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds issued to the CENTRAL SOUTHERN RAILROAD COMPANY,

vs.

THE NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.*

5

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the TENNESSEE AND ALABAMA RAILROAD COMPANY,

vs.

6 NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.*

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS AND OHIO RAILROAD COMPANY,

7

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

8

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY,

vs.

THE MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

It is stipulated by and between the parties to the above-named suits, in order to avoid the trouble, expense and delay of formal proof, that the following are facts proven in these causes:

First.—In reference to the bonds of the State of Tennessee loaned to the railroad companies involved in these causes and their predecessors in interest under the Internal Improvement Laws of the State of Tennessee, as a general proposition, subject probably to some exceptions, the purchasers of said bonds did not know when they purchased the same originally to what companies they had been issued. The information contained in receipts taken by the Secretary of State from the companies as to the bonds loaned before the late war was never made known except as it may be claimed to have been made known by said receipts and by the report of

5

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the TENNESSEE AND ALABAMA RAILROAD COMPANY,

vs.

6 NASHVILLE AND DECATUR RAILROAD COMPANY, *et al.*

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee, issued to the MEMPHIS AND OHIO RAILROAD COMPANY,

7

vs.

THE LOUISVILLE AND NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

8

CALVIN AMORY STEVENS, on behalf of Holders of Internal Improvement Bonds of Tennessee issued to the MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY,

vs.

THE MEMPHIS, CLARKSVILLE AND LOUISVILLE RAILROAD COMPANY, AND THE LOUISVILLE, NASHVILLE AND GREAT SOUTHERN RAILROAD COMPANY.

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13 a joint select committee of the Legislature of Tennessee, appointed by the General Assembly of 1857-8, to investigate the offices of Comptroller and Secretary of State and other purposes, made August 11, 1858, and by a report made by John C. Burchs Comptroller, in 1875. The information relative to the bonds loaned after the war was not made public except as it may be claimed to have been made public by the receipts themselves until a report was made by G. W. Blackburn, Comptroller
14 of Tennessee, in October, 1869.

The bonds were principally negotiated or transferred either in Tennessee or New York. They were either payable to bearer, using those words, or to blank or order, leaving the blank unfilled, or, if filled, it was done with some name other than the companies to whom they were loaned.

Answer No. 2,462, pp. 3 and 4.

Second.—The name of the railroad company to
15 which the bonds of the State of Tennessee were loaned under said law does not in any way appear either in or upon the bond.

Ans. No. 2,462, p. 4.

Nor the name of the railroad company to which the bonds of the State of Tennessee were issued under other laws passed by the Legislature at the session of 1852, including those issued under the act of January 15,1852, does not appear in any way
16 either in or upon the bond.

Third.—That up to to the passage of the Internal Improvement Law of February 11, 1852, the State of Tennessee had never defaulted upon the interest of her public debt, and the straight six per cent. bonds of the State were quoted on the New York Stock Exchange as follows:

Quotations of sales of Tennessee State bonds, taken from the official reports of the New York Stock Exchange, as published in the New York *Journal of Commerce*, during the year 1852: 17

Date of Report.	*Amt. of Sale.*	*Price.*
1852, February 24,	1,000 6's,	102.
" April 9,	7,000 6's '90	105.
" May 31,	2,000 5's,	92.
" June 17,	2,000 6's,	110.
" July 19,	2,000 5's,	92.
" December 9.	5,000 6's '68,	106.

18

Fourth.—The report of J. G. M. Ramsey, Agent of the State of Tennessee for the sale of bonds issued to the East Tennessee and Georgia Railroad, made to the Governor of the State, dated September 20, 1851, may be read by complainant on his behalf without objection to its competency. Respondents reserve the right to introduce any proof they may obtain in rebuttal of the facts stated in that report.

19

Fifth.—The Tennessee and Alabama Railroad Company received from the State three hundred bonds in July and September, 1854. The English merchants who sold them their iron failed to deliver it according to contract, and the company refused to pay them, but they reserved one hundred and forty-three of the bonds until the dispute could be settled, and they continued in the company's possession until after August, 1855. On the 30th June, 1859, said company had on hand 389 State bonds, 20
301 of which were issued as early as June 4th, 1858. On June 30th, 1860, said company had on hand 303 State bonds, 201 of which had been issued as early as June 4th, 1858. Many other instances of a similar kind could be given where the various railroad companies preferred to use their other means in ironing and equipping the first part of their roads, reserv-

21 ing their State bonds for ironing and equipping other parts of their roads. The companies cut the coupons from these bonds, and with them paid the interest on these bonds into the Bank of Tennessee, as they did the interest on those bonds that had been negotiated.

Ans. No. 2,462, pp. 8 and 9.

In 1852 the taxable property of Tennessee was $177,420,305. The debt of the State then amounted
22 to only $3,992,856.66, and the rate of State tax was only 11½ cents to the hundred dollars. After the loan of bonds to railroads there was no difference in the money market between prices of the bonds loaned to railroads or those issued by the State to raise the capital of the Bank of Tennessee, or to build her State house; nor was there any difference in price between the bonds loaned to the most valuable railroads and those loaned to the most worthless, except that in both of the above cases a difference of
83 from two to five per cent. on limited transactions has arisen within the last two years, in the open market in New York, but no difference has ever existed on the Stock Exchange of New York, owing to the way in which Tennessee bonds are called at said Exchange.

Respondents have caused thorough investigation to be made in each of their offices, and have been unable to find any evidence that there was any record made and kept by them of the numbers,
24 dates, or series of the bonds issued to them, and have no knowledge, information, remembrance or belief in regard thereto (p. 12). The proceeds of these bonds were applied as directed by the laws under which they were loaned to railroads (p. 13).

The Comptroller's reports show that the Sinking Fund Commissioners credited each railroad company with the annual amounts paid in; but in their

investment thereof selected any bonds of the State 25
that were offered for sale. Thus, from the Comptroller's report of 1859 (page 59), it seems that the Tennessee and Alabama Railroad Company paid to the Treasurer $6,400, which was invested in one bond endorsed by the State for the East Tennessee and Georgia Railroad Company, four State 5¼ per cent. bonds, and three State five per cent. bonds. Not one of the bonds purchased with the money paid in by that company had ever been issued to it. The idea of the State 26
at that time was to pay the interest on all the bonds that were paid into the Railroad Sinking Fund, and that the accumulation would be so rapid as to certainly raise a fund that would pay the bonds by their maturity.

In the Comptroller's report of 1859 (p. 16), he states that $82,840.95 paid in by the railroad therein named, invested, with accrued interest, had purchased bonds amounting to $109,750, which paid an annual interest of $6,417.50, or 7¾ per cent. on the 27
investment.

The State had loaned her own bonds to some of her Internal Improvement Companies; she had endorsed the bonds of some of the other companies, and has issued her own bonds to pay for her State House, and for other purposes. The result was that she had several different series of bonds issued under different laws and maturing at different times. Series A were 5 per cent. bonds issued under Act of 1838, maturing in thirty years. They were issued 28
principally to pay for stock subscribed by the State in various turnpikes and railroads, and aggregated $1,893,000. Series B were known as "White bonds, six per cent., issued under the Act of February 11th, 1852." Numbers 1 to 7,908 of this series mature in 1892, while numbers 7,909 to 11,806, do not mature until 1898. This series aggregated $11,806,000.

Series C were also known as "White bonds, six per cent., issued under the Act of February 11th, 1852," and due in 1898. This series aggregated $1,878,000. Series B and C represented the State Bonds loaned to the various railroads under the said Act of February 11th 1852, before the war. Under the Act of March 20th, 1860, to illustrate, the East Tennessee & Virginia Railroad Company paid in fifteen of their own endorsed bonds, and two regular State bonds; the Memphis & Charleston Railroad Company paid in sixteen State bonds, and $2,960 in cash; the Memphis & Ohio Railroad Company paid in six State bonds; and so have the McMinnville & Manchester Railroad, and the Tennessee & Alabama Railroad.

Though the various Acts of the Legislature and the reports of the Comptroller and of the Sinking Fund Commissioners, referred to in the answers, were all public, no bondholder was ever heard to protest against the authority assumed by the State, or against the cancellation and destruction of the securities which the companies had paid into the Sinking Fund. An opinion, however, of Judges Davis and Davies was obtained, addressed to J. J. Donaldson, Chairman of Committee of bondholders, dated May 2, 1870, which is made Exhibit X to this stipulation. No bondholders ever presented a State coupon to any railroad company for payment. No Tennessee railroad company had any banker or other correspondent in New York to pay the coupons on the State bonds loaned to it. No company ever retained in its possession the coupons that had been paid on the bonds loaned to it.

As long as the Bank of Tennessee was in operation it was regarded as the fiscal agent of the State. All of its directors were appointed by the State. They were required to report to the State and were constantly kept under its control. The State Treas-

urer kept none of the State funds in his own hands, 33
but deposited all the revenues of the State in the
Bank of Tennessee, and could only check for the
same on checks countersigned by the Comptroller.
The Bank of Tennessee paid the interest on all the
State bonds, without reference to the purpose for
which they were issued. This is shown by the re-
port of the Comptroller to the Session of 1851-2,
when the general Internal Improvement Law was
passed. (See his report, page 65.) The Merchants'
Bank of New York and the Bank of North America 34
of Philadelphia, were the correspondents through
whom the Bank of Tennessee paid the interest
on the State debt. These correspondents would re-
turn the coupons to the Bank of Tennessee, by
whom they were returned to the State. There was
one account on the books of the Bank of Tennessee
headed "Treasurer of Tennessee," which was
credited by the revenues of the State deposited by
the Treasurer, and by the dividends derived from
the State's stock in the bank, and the various in- 35
ternal improvement companies in which the State
was a stockholder, and was debited by the interest
on the entire State debt paid by the bank of Ten-
nessee, and by such other sums as were drawn by
the Treasurer under appropriations made by law.
There was also an account on the books of the Bank
of Tennessee headed "Interest paid on State Bonds,"
the object of which was to show the exact amount
paid on that account, but it shows nothing as to
whom, or for what purpose the bonds were issued 36
upon which such interest was paid. There was also
an account headed "Railroad Companies, for In-
terest," showing the amounts and dates of all pay-
ments into the bank by the different companies, but
it does not show that the payments were to be ap-
propriated to the interests upon any particular

bonds of the State; nor did the bank, in fact, know what bonds had been issued to any named railroad.

The funds paid in by all the railroads were transferred either to the Treasurer's general account or to the account headed "Interest on State Bonds."

The Bank of Tennessee kept entries in its books showing the amount which each railroad company paid in for account of its interest. It is stipulated that extracts from the books of the bank may be read by either party. The moneys paid in by the railroads were sent by the Bank of Tennessee, with other funds to New York and Philadelphia, where they were paid out by the correspondents aforesaid upon coupons of the State, making no distinction between the different bonds of the State.

These correspondents kept no accounts with the railroad companies, and did not know to whom the bonds were issued, the coupons of which they were paying.

The Merchants' Bank of New York City was the correspondent in New York, through whom the Bank of Tennessee paid nearly all the interest-coupons payable at New York on the bonds of the State of Tennessee, issued for all purposes, and this agency continued from 1852, through the years 1853, 1854, 1855, 1856, 1857, 1858, 1859, 1860, and to April, 1861.

The ledgers of the Merchants' Bank of New York and the books in which they took the receipts of coupon-holders and the detailed statements of paid coupons forwarded regularly every six months by the Merchants' Bank to the Bank of Tennessee, show that as to all the bonds issued under the Act of 1851-2, Chap. 151, or Acts amendatory thereof, the Merchants' Bank did not keep, nor attempt to keep, an account showing the railroad company to whom the bonds were issued, the coupons on which

were paid, nor did they attempt to classify or iden- 41
tify the coupons, when paid, as being coupons from bonds issued to any particular railroad company.

The only accounts shown on the books of the Merchants' Bank for said years with the Bank of Tennessee were two: first, the general reciprocal account, on one side of which appeared the gross sums of money to the credit of the Bank of Tennessee, and on the other its checks and drafts; secondly, an interest or coupon account, showing the amount of coupons paid, and this account 42
was credited with and balanced by checks drawn by the Bank of Tennessee upon its regular account and balance in the Merchants' Bank at the time, without any discrimination as to the coupons to which the payments were applied.

This admission is made alone to save the expense and trouble of making copies of the entries from said books of the Merchants' Bank, and states truly the facts as they actually appear on said books.

When the State of Tennessee was in default in the 43
payment of interest on any of its bonds it was in default on all of them then matured, except such as were held by the East Tennessee University and the Commissioners of the Common School Fund, which were provided for by special legislation.

Each coupon could be identified when detached from its bond as having been separated from their respective bonds, which identification existed by means of the color, letter and number of the instruments. 44

In the Treasurer's books an account was headed "Bank of Tennessee," the reverse of the account kept under his name at the said bank. There is also an account headed "Interest on Capital Bonds," in which is shown the interest paid on the bonds issued to pay for the State House.

There is also an account headed "Interest on In-

45 ternal Improvement bonds." It shows the gross amount paid out on such bonds, but it does not show by whom the money was furnished, nor does it show the number or character of the bonds on which the interest was paid. There are no separate accounts with the different railroads to be found on the Treasurer's books. With the exception of the distinction between Capitol and Internal Improvement bonds, the Treasurer made no difference between the various bonds of the State, but treated
46 all as equally the obligations of the State.

The interest on the bonds loaned to respondents was not paid after July 1, 1861, except as hereinafter stated. And though the United States Circuit Court was open in Nashville, after its capture by the United States army in February, 1862, no bondholder ever claimed the right to a receiver for nonpayment of interest.

The copies of the resolution and report attached as Exhibits A and B, to the answer of the L. & N.
47 R. R. Co. No. 2,462, are admitted to be correct copies. They were published in the acts and journals of that session.

The bonds and coupons were paid by the L. & N. R. R. Co. as therein stated. The bonds cost 68 4-10 cents per dollar, which includes per cent. of overdue coupons. The bonds paid to the State by the Memphis & Ohio Railroad Company cost 63 9-10 cents on the doilar. The bonds with which the Memphis, Clarksville & Louisville Railroad was
48 bought, cost 63 7-10 cents on the dollar. The above prices include per cent. of overdue coupons which price includes the overdue coupons. And no one ever controverted the right of the State to make a settlement until this bill was filed, except so far as the opinion addressed by Judges Davies and Davis to J. J. Donaldson as Chairman of the Committee of Tennessee bondholders circulated in pam-

phlet in New York City and some in Europe in 1870, may be so considered.

The Louisville & Nashville Railroad Company on April 8th, 1868. executed a mortgage or trust deed duly registered, upon its main stem and branches, to James Punnett and Junius B. Alexander, citizens of the State of New York, to secure an issue of eight millions of dollars of bonds of which $7,070,000 were sold in Europe and are now outstanding in the hands of European holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the fact that the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of bondholders was circulated as aforesaid.

The said Punnett has since died, and John B. Smith, a citizen of Louisville, Kentucky, has been substituted as trustee. On November 1st, 1873, said company executed another mortgage or trust deed duly registered, conveying the same property and also the Memphis & Ohio and the Memphis, Clarksville & Louisville Railroads to Henry F. Vail, a citizen of the State of New York, and John B. Smith, a citizen of Louisville, of Kentucky, to secure an issue of four million dollars of bonds, of which two million are now outstanding in the hands of holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851–2, and their amendments, and the fact that the said opinions of Judges Davies and Davis addressed to J. J. Donaldson, as Chairman of the Committee of bondholders, was circulated as aforesaid. In March, 1865, the bonds of the State of Tennessee were of the market value of fifty cents, but in December, 1865, they were at 92

53 cents in the dollar, as stated by the Financial Review of New York. The Nashville & Decatur Railroad Company, created by the consolidation of the Tennessee & Alabama Railroad Company and the Central Southern Railroad Company, in March, 1871, paid to the State of Tennessee $2,368,176 in bonds and coupons of the State. Said company had raised the money to buy the bonds and coupons paid in by them, by mortgaging the road for $2,-100,000, in 1870, and selling the company's bonds
54 in the New York market. None of the State bondholders attempted by any legal proceedings to assert any rights in opposition to the course which that company was pursuing except so far as obtaining the opinion of counsel above referred to. And the Louisville & Nashville Railroad Company leased said Nashville & Decatur Railroad in May, 1871, agreeing to pay $2,450,000, of the debts of said company, and an annual six per cent. dividend upon its capital stock of $1,512,184.11, and in addition
55 to all this, the Louisville & Nashville Railroad Company have spent $ over and above their receipts in the repair and operation of said road.

On May 25th, 1871, the Memphis & Ohio Railroad Company paid the State of Tennessee $2,468,376.50 in bonds and coupons of the State. On the first of June, 1871, the Memphis & Ohio Railroad Company mortgaged its road for $3,500,000 of bonds, which were originally sold and are still held in Europe by
56 holders, who had not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the laws of Tennessee of 1851-2, and their amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders, circulated as aforesaid. No State bondholders having made any complaint to

Court or addressed to them, the Louisville & Nash- 57
ville Railroad Company consolidated with said Memphis & Ohio Railroad Company, endorsed said $3,500,000 of said bonds, and have since expended $ over and above their receipts in the repair and operation of said road.

In January, 1871, the State of Tennessee filed its bills in the Chancery Court at Nashville, Tennessee, against the Memphis, Clarksville & Louisville Railroad Company, to whom State bonds had been loaned, upon which such proceedings were had as 58
will appear by a certified transcript of the record to be filed in these cases. The State bondholders have never sought to review or reverse said decree.

On August 1st, 1872, the Louisville & Nashville Railroad Company placed a mortgage on said last named road for $2,465,000 of bonds which the Louisville & Nashville Railroad Company endorsed, and which were originally sold in Europe in 1872, and are still held there by holders for value, who had not received any notice of the existence of any 59
claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851–2, and their amendments, and the said opinions of Judges Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders, circulated as aforesaid. Said Louisville & Nashville Railroad Company have also expended $ over and above their receipts in the repair and construction of said road.

With the exception of some interest paid in 60
1867-8, and some paid in 1874-5, the State of Tennessee has paid no interest since the commencement of the late war, and the remainder of the interest has all been funded into new bonds of the State, except that which matured since January 1st, 1876, and it has neither been funded nor paid. The Act of 23d November,

1865 (see Public Acts, 1865-6, pp. 11 and 12) was carried into execution as to all the railroads in this litigation.

All, or nearly all, of the past due coupons referred to in said Act were fuunded by the present bondholders or those under whom they claim. The coupons were delivered to the State, pasted in books kept in the comptroller's office, and new bonds received from the State for the old coupons. A new bond might have been for coupons on bonds loaned to several different railroad companies or on bonds not loaned to any railroad company, and so of the practice under the funding Act of 1873.

The Nashville and Decatur Railroad Company and the original companies forming the consolidation had received State bonds, which, with interest and sinking fund, amounted to $2,368,176. They met their interest in January, 1869, but fell behind $15,955.26 on their interest for July, 1869.

This authorized the State to appoint a receiver; and experience on other roads had taught that in every instance these State receivers had run the roads down, without ever reducing the indebtedness.

In October, 1869, the debt of Tennessee was $37,590,027.08, of which about $30,000,000 were for bonds loaned to railroad companies, with funded interest thereon. The State's bonds ranged in New York in 1869 from 70 cents in January to 40½ cents on the dollar in December, there being no distinction between bonds loaned to railroads and any other bonds.

On July 1, 1870, the Nashville and Decatur Railroad Company executed a mortgage or trust deed upon their railroad property, rights and franchises, conveying the same to Philo C. Calhoun, Richard T. Wilson and Adrian Iselin, all citizens of the

State of New York, to secure first mortgage bonds 65
to the amount of $2,100,000 issued and negotiated to raise the money to buy the State bonds to pay the debt due from said company. Said mortgage was duly executed and registered. The bonds are now outstanding in the hands of persons who for most part are citizens of States or countries other than Tennessee, holders for value, who had not received any notice of the existence of any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851-2, and 66
their amendments, and the said opinion of Judges Davies and Davis addressed to J. J. Donaldson as chairman of the Committee of Bondholders, circulated as aforesaid.

The following is a copy of one of said bonds:

[*Form of Bond.*]

No.. UNITED STATES OF AMERICA. $1,000.

STATES OF TENNESSEE AND ALABAMA. 67

THE NASHVILLE AND DECATUR RAILROAD COMPANY.

7 *per cent. First Mortgage Sinking Fund Bond.*

The NASHVILLE AND DECATUR RAILROAD COMPANY promise to pay to the holder of this Bond, on the first day of July, one thousand nine hundred, for value received, the sum of *one thousand dollars*, in lawful money of the United States, in the City of New York, with interest in the meantime at the rate 68
of *seven per cent.* per annum, payable semi-annually on the first day of January and July of each year on delivery of the annexed interest warrant.

U. S. Int. Rev. Stamp. $1.05.

This bond, with others of like tenor and date, amounting in the aggregate to a sum not exceeding two million one hun-

dred thousand dollars, is secured by a first mortgage on the railroad and franchises of said company made by Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, and is entitled to the benefit of a sinking fund, as set forth in the deed of trust.

This Bond shall pass by delivery or by transfer on the books of the company. After a registration of ownership, certified hereon by the Transfer agent of the Company, no transfer except on the books of the company shall be valid unless the last transfer be to bearer.

IN WITNESS WHEREOF, the said Nashville and Decatur Railroad Company has caused this bond to be signed by its President and Secretary, and its corporate seal to be hereunto affixed, at the City of Nashville, Tennessee, on the first day of July, Anno Domino one thousand eight hundred and seventy.

J. W. SLOSS,
President.

[SEAL.] G. W. SEAY,
Secretary.

I certify that the Nashville and Decatur Railroad Company has paid off the debt to the State of Tennessee, which was created by the loans of the bonds of said State, and for interest thereon, and that this bond is secured by a first mortgage, and is issued under authority of law, and takes the place of the lien which was held by the State.

ED. R. PENNEBAKER,
Comptroller of the State of Tennessee.
By P. C. CALHOUN,
Prest. Agent.

ONE THOUSAND DOLLARS.

SECURED BY FIRST MORTGAGE.

[*Form of Coupon.*] 73

THE NASHVILLE AND DECATUR

$35 Railroad Company $35

will pay the bearer in the City of New York Thirty-five dollars in lawful money of the United States, on the first day of.... 18.. for semi-annual interest on bond No....

G. W. SEAY,
Secretary.

[*Trustees' Certificate.*]

We certify that this bond is one of a series not ex- 74
ceeding two million one hundred thousand dollars, described in and secured by the deed of trust or mortgage mentioned herein, bearing date first day of July, Anno Domini one thousand eight hundred and seventy, which was duly recorded.

P. C. CALHOUN,
R. T. WILSON, } *Trustees.*
ADRIAN ISELIN,

75

The State Comptroller in his report in 1869, page 50, suggested to the Legislature the propriety of selling a sufficient number of the railroads for bonds of the State, to lessen the State's liabilities eight or ten millions of dollars, he believing with such reduction the State's liabilities could be regularly and certainly met His report in 1867 (page 67) shows that the railroads then owed $800,000 for interest due July 1st, 1867, which the State had paid on the bonds loaned them.

The Comptroller in his report for 1867 states that the 76
records of his office show that from the railroads then in the hands of Receivers scarcely a dollar had been received during the past fiscal year (page 13). If the State had forced a sale of all the delinquent railroads so large an amount of such property thrown upon the market, in the depressed financial condition of the country, would have sacrificed alike the

77 interest of the companies and the State, but by allowing the companies to pay their debts in any of the bonds of the State, and giving them a reasonable time in which to get the bonds, they were enabled to procure them at reasonable rates, and by reducing the aggregate debt of the State, they increased the ability of the State to pay, and the bonds of the State which were quoted as low as 40½ in December, 1869, were quoted as high as 91¼ cents on the dollar in March, 1874, at the New York
78 Stock Exchange.

An elaborate opinion was written at the instance of the Nashville and Decatur Railroad Company, by Colonel Pryor, which was concurred in by the Hon. E. H. East, of Nashville, who was then and is now one of the most eminent lawyers of Tennessee. The object of asking the opinion was not to satisfy said company, but to place the question fairly before the money markets of the world, where said company was trying to raise the means to buy the
79 bonds to deliver to the State as they claimed in payment of their debt to the State. The respondents knew nothing of any opinion of New York counsel to the same effect that was published at or about that time. It is true that the transaction in all its entirety was fully understood by the N. & D. R. R. Co., and they supposed it was also understood by the purchasers of their new bonds, as the legislation under which they were issued was referred to in the mortgage, and the opinion of Colonel
80 Pryor was published to give information on the subject. Said company acted upon the advice of counsel, and in confidence that said advice was correct.

It is stipulated that the amount of bonds received from the State of Tennessee, the dates of default stated in the pleadings, are true.

It is admitted that there had been issued to the

Memphis and Ohio Railroad Company State Bonds 81
which, with interest and sinking fund, amounted
in year to $2,396,110. They met their in-
terest in January, 1867, but failed to pay their
interest for July, 1867. The Governor, however,
felt bound to comply with the law and appointed a
Receiver to take charge of the road; said company
were also heavily indebted for labor, materials and
supplies. The earnings were insufficient to pay
operating expenses, and additional means were
needed to put the road in a safe condition. 82

The Louisville and Nashville Railroad Company being greatly interested in the efficient operation of said road as a part of the Louisville and Memphis line, had already advanced to said Memphis and Ohio Railroad Company $125,000, and then agreed to lease their road, to pay the interest on the State Bonds to the State of Tennessee, and to pay the debts of said company incurred since the war in the reconstruction and operation of the road. They were to reimburse themselves, if possible, from the 83
earnings of the road, but if there should be a surplus of earnings, it was to be paid over to the Memphis and Ohio Railroad Company (p. 33).

The Louisville and Nashville Railroad Company paid the interest upon the bonds loaned to said last-named road. Said payments were made regularly each six months from July, 1867, to July, 1871. Each semi-annual payment amounted to $71,883.30, and they were made mostly in cash, though some were made in past-due bonds and coupons of the 84
State. During most of this time the State was in default upon the interest due on the bonds loaned to the Memphis and Ohio Railroad Company, and was using for other purposes the money which the Louisville and Nashville Railroad Company were paying to enable her to meet interest on said bonds.

85 On the 25th of May, 1871, the Memphis and Ohio Railroad Company paid the State of Tennessee $2,468.376.60, in bonds and coupons of the State, as the company claimed in full of all claims and demands of said State against said company, and in full discharge and satisfaction of all liens upon the property, rights, franchises and privileges of said company originating in, or created by the loan or issuance and delivery to said company of the bonds of said State under or by virtue of the Act of the
86 Legislature of said State, passed the 11th day of February, 1852, entitled, "An Act to create a system of internal improvements in this State," and under the Acts amending the same, or any other Acts of said Legislature.

The Comptroller of said State executed and delivered to said company a receipt evidencing said payment, and a copy of said receipt is hereto filed, marked Exhibit C., to the Mem. & O. Answer.

On June 1st, 1871, said Memphis & Ohio Rail-
87 road Company executed a mortgage or trust deed upon their railroad property, rights and franchises conveying the same to Junius B. Alexander, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $3,500,000 of claiming or purporting to be first mortgage bonds. Said mortgage was duly executed and registered, and the bonds originally negotiated in Europe in 1871, are now outstanding in the hands of holders there for value, who had not received any notice of the existence of
88 any claim to a statutory lien on the roads, except such as may be implied from the Tennessee laws of 1851, '2, and their amendments, and the circulation as aforesaid of the said opinion of Judges Davies and Davis, and addressed to J. J. Donaldson, as Chairman of Committee of Bondholders.

After the Memphis and Ohio Railroad Company had delivered the bonds to the State as aforesaid,

and had mortgaged their road, the Louisville & 89
Nashville Railroad Company endorsed $3,500,000
of bonds secured by said mortgage, and on Octo-
ber 9th, 1872, entered into formal articles consoli-
dating the two companies as stated above, the con-
solidation becoming bound for all the debts of the
Memphis & Ohio Railroad. The articles of consol-
idation were duly registered in October, 1872, in all
the counties in Tennessee through which the Mem-
phis and Ohio Railroad ran.

On November 1st, 1873, the Louisville & Nash- 90
ville R. R. Co. executed a mortgage on their main
stem and branches, including the Memphis & Ohio
Railroad, conveying the same to Henry F. Vail, a
citizen of New York, and John B. Smith, a citizen
of Kentucky, to secure $4,000,000 of bonds,
$2,000,000 of which are now outstanding in the
hands of *bona fide* holders for value, who had not
received any notice of the existence of any claim to
a statutory lien on the road, except such as may be
implied from the Tennessee laws of 1851-2, and 91
their amendments, and the circulation as aforesaid
of the said opinion of Judges Davies and Davis ad-
dressed to J. J. Donaldson, as Chairman of the
Committee of bondholders. Said mortgage was
duly registered (p. 37).

With reference to the answer in the Memphis,
Clarksville and Louisville R. R. Co. The M. C.
& L. R. R. Co. having defaulted on its interest the
Governor placed it in the hands of a Receiver as
early as July 1st, 1865, and though it was continued 92
under State Receivers until it was sold "it never
paid one cent into the treasury on any account
whatever."

The easterly span of the Cumberland River
Bridge and the whole of the bridge over the Ten-
nessee River had been destroyed during the war,
some of the trestling had been swept away, some of it

had been thrown out of position, and all of it that was standing needed extensive repairs. One of the most frightful railway accidents of modern times occurred on this road in consequence of a passenger train running through the Budd's Creek trestle. The dirt embankments had been badly washed, and the cuts filled up with mud, in some instances ten feet deep. Many parts of the road were overgrown with grass, weeds and briars. The farmers along the road, being in need of iron during the war, had taken rods, bolts, spikes and chairs for blacksmithing purposes, and had even cut the bridges and trestles to get the iron. Switch circles, targets and connecting rods were taken off and used for the same purpose.

This railroad is about eighty-two miles long. The termini are both small villages of no commercial importance, and the country traversed is poor and sparsely settled. The road crosses three large rivers, and numerous small streams requiring many bridges and trustles. The cost of construction and maintenance of way is enormous, while the local business of the road is almost nothing. To have kept such a road in operation through a receiver until the State bonds loaned to it matured would have cost the State millions of dollars. To have allowed it to remain unused would have been equivalent to abandoning it to waste and destruction, and as to the company keeping it up, they were utterly insolvent, and as early as March 28, 1867, initial proceedings to go into voluntary bankruptcy, for which purpose they afterwards filed a petition in the United States District Court at Nashville.

It is agreed that the bill of the Memphis, Clarksville and Louisville Railroads against the Commissioners for the sale of delinquent railroads and the action thereon may be read.

After their purchase of the Memphis, Clarksville

and Louisville R. R. Co., the Louisville and Nash- 97
ville Railroad Company executed a mortgage upon said Memphis, Clarksville and Louisville Railroad Company, conveying it to Junius B. Alexander, a citizen of New York, and John B. Smith, a citizen of Kentucky, to secure $2,465,200 of bonds, which were endorsed by the Louisville and Nashville Railroad Company and negotiated in Europe in 1872, where they are now outstanding in the hands of purchasers for value. Said mortgage was executed August 1, 1872, and shortly thereafter was duly 98
registered in all the counties through which said road runs. The purchasers of said bonds had not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the circulation as aforesaid of the said opinions of Judges Davies and Davis, and addressed to J. J. Donaldson as Chairman of the Committee of Bondholders.

Afterwards, on November 1, 1873, the Louisville 99
and Nashville Railroad Company executed a mortgage on their main stem and branches, including said Memphis, Clarksville and Louisville Railroad to secure $4,000,000 of bonds, $2,000,000 of which are now outstanding in the hands of purchasers for value who have not received any notice of the existence of any claim to a statutory lien on the roads except such as may be implied from the Tennessee laws of 1851-2, and their amendments, and the circulation as aforesaid of the said opinion of Judges 100
Davies and Davis addressed to J. J. Donaldson as Chairman of the Committee of Bondholders. Said mortgage conveyed said property in trust to Henry F. Vail, a citizen of New York, and John B. Smith a citizen of Kentucky, and was, shortly after its execution, duly registered in all the counties through which said Memphis, Clarkville and Louis-

101 ville Railroad runs. Said road lies entirely within the State of Tennessee.

It is admitted that the complainant received several years ago from his father, who had been an owner of Tennessee bonds for many years, an amount between one and two hundred thousand dollars of said Tennessee bonds; he also became an owner of such bonds by individual purchases made on his own account about eight years ago. The aforesaid bonds cost his father and himself more
102 than eighty cents on the dollar; and that in addition thereto for some time prior to the filing of these bills, he was engaged in the New York market in selecting Tennessee State bonds loaned to the Central Southern and the other companies involved in these suits, and has been buying Tennessee bonds on the market at heavy rates of discount, at less than fifty per cent. of their par value; that he has been exchanging Tennessee bonds which had not been loaned to railroads for bonds issued to res-
103 pondents, paying one or two per cent. for the exchange.

That at the time he was making these transactions he knew that the defendant railroad companies claimed that they had paid their entire debts on account of Tennessee bonds, and denied all liability either to the State or to the bondholders for bonds, but complainant relied upon what he thought were the rights conferred upon holders of such bonds by the Internal Improvement Act of February 11, 1852,
104 and its amendments, and did not believe that it was in the power of the State and the railroad companies to discharge the lien which he believed was created by those acts except by actual payments to the holders.

Some of the bonds sued on in these suits were received from complainant's (Stevens) father; some were purchased about eight years ago by him, some

were recently acquired by him by purchase or ex- 105
change, as stated above. That James L. Gaines has been Comptroller of the State of Tennessee since January, 1875.

It is further stipulated that all statutes, public documents and records of the State of Tennessee may be read as evidence by either party on the hearing of the causes, subject to exception for irrelevancy. They may be so read, as may also the public statutes of New York, from the usual official publications, without any more formal proof, except 106
that either party may introduce certified copies of the original documents where any difference appears between the published volumes and such originals. Other facts not embraced in this stipulation and deemed material by either party may be subject of proof in the usual mode.

It is further agreed that all five of the above cases may be heard at the same time and place before the same Court.

E. L. ANDREWS, 107
Solicitor for Complainants.
ED. BAXTER,
Solicitor for Respondents.

August 14, 1879.

108

CIRCUIT COURT OF THE UNITED STATES,

SIXTH JUDICIAL CIRCUIT, WESTERN DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues on behalf of himself and other holders of Tennessee State Bonds, issued to the Memphis and Charleston Railroad Company, 1

against

The Memphis and Charleston Railroad Company, and the East Tennessee, Virginia and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the East Tennessee and Georgia Railroad Company, 2

against

The East Tennessee and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the East Tennessee and Georgia Railroad Company, 3

against

The East Tennessee, Virginia and Georgia Railroad Company.

Same Complainant, on behalf of himself and other holders of Tennessee State Bonds, issued to the Knoxville and Kentucky Railroad Company, 4

against

The Knoxville and Kentucky Railroad Company, and the Knoxville and Ohio Railroad Company.

It is stipulated between the complainant and the

5 defendants, William T. Walters, on behalf of himself and other holders of bonds of the Memphis and Charleston Railroad Company, and as defendant as trustee of the mortgage of the Knoxville and Ohio Railroad Company, and Charles Burckhardt and others, on behalf of themselves and other holders of bonds of the East Tennessee, Virginia and Georgia Railroad Company, that the following facts are admitted in the above entitled causes, without proof:

6

First.—That on the 20th of August, 1877, the Memphis and Charleston Railroad Company, a corporation duly created and organized under the laws of the States of Tennessee, Alabama and Mississippi, party of the first part, and the Farmers' Loan and Trust Company, a corporation created by the laws of the State of New York, party of the second part, entered into a certain indenture, or deed of trust, which was duly executed and delivered by the
7 Memphis and Charleston Railroad Company, and registered according to the laws of Tennessee, Alabama and Mississippi, a true copy which is attached to the answer of the said William T. Walters, in the case against said company and others, marked "Exhibit No. 1;" that in pursuance of the provisions of said indenture, the Memphis and Charleston Railroad Company and the Farmers' Loan and Trust Company, on the 21st day of August, 1877, entered into another and further agreement
8 and indenture, known as a tripartite agreement, with Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., of the State of New York, parties of the first part thereto, a true copy of which is also attached to said answer, marked "Exhibit No. 2;" that the bonds described and secured by said mortgage, or deed of trust, were duly issued and used for the purposes therein described and authorized, and were sold to purchas-

ers in good faith and for full value, but below their 9
par value ; that the certificate of Marshall T. Polk, Treasurer of the State of Tennessee, and of James D. Porter, Governor, and Charles N. Gibbs, Secretary of State, of said State, correct copies of which are set out in said triparite agreement, being Exhibit No. 2 to said answer, were made as therein alleged ; that the said Adrian Iselin and Adrian Iselin, Junior, composing the firm of A. Iselin & Co., did, as therein recited, with the consent and approbation of the Memphis & Charleston Railroad Company, and of its board 10
of directors, pay to the State of Tennessee, in the bonds of said State and coupons of such bonds, at par, which bonds and coupons had been purchased at less than par, the amount of indebtedness of the Memphis & Charleston Railroad Company, claimed by the State to be due to it, and for which it claimed a lien on said railroad, for bonds of the State of Tennessee loaned by it to said railroad company under the internal improvement laws, and for certain other State bonds issued to fund or pro- 11
vide for interest on the amount thereof, during a certain period ; that the said William T. Walters is the owner and holder of eighty of said bonds of the Memphis & Charleston Railroad Company for one thousand dollars each, with the coupons thereto attached, referred to in said two deeds, which are a part of the first fourteen hundred thereof, in number being numbered from 1,241 to 1,320, inclusive, the said Walters having purchased the same in good faith and for full value, after the execution 12
of said two deeds; that the said Walters requested the Farmers' Loan and Trust Company, as trustee under said tripartite agreement for his benefit and that of other holders of said bonds, numbered from one to fourteen hundred, and as such claiming to hold the legal interest and title for that purpose of a lien claimed in this case by the com-

plainant for his own use and benefit to cause itself to be made a party defendant in this suit, and defend the same for the interest of the said holders and others similarly situated, which the said Farmers' Loan and Trust Company declined and refused to do.

Second.—That on or about the first day of June, 1870, the East Tennessee, Virginia and Georgia Railroad Company, a corporation organized under the laws of the States of Tennessee and Georgia, party of the first part, and Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, all citizens of the State of New York, parties of the second part, entered into a certain indenture or deed of trust or mortgage of that date, duly executed and delivered by the said parties, acknowledged and registered according to the laws of the States of Tennessee and Georgia, a true copy of which is attached to the answer of the said Charles Burckhardt and others herein, and marked "Exhibit No. 2;" that on the 11th day of August, 1870, the East Tennessee, Virginia & Georgia Railroad Company made a settlement with the State of Tennessee, for the indebtedness of the said company, claimed to be due to the said State, on account of bonds of said State, loaned and advanced by it to the East Tennessee and Virginia Railroad Company, and the East Tennessee and Georgia Railroad Company, by the payment to said State on that day of the sum of $4,117,761.10 in bonds of the State of Tennessee, and past due coupons thereon, at par, being the entire amount of the indebtedness of the said railroad companies claimed to be due to said State on that account, as of the 1st day of July, 1870, a statement of which debt, and the settlement thereof, certified by Edward W. Pennebacker, Comp-

troller of said State, a true copy of which is set out in "Schedule A," to the answer of the East Tennessee, Virginia and Georgia Railroad Company, to the bill of complaint of the complainant herein; that the whole amount of bonds described in said indenture or deed of trust and mortgage made by the East Tennessee, Virginia and Georgia Railroad Company to the said Calhoun, Wilson and Iselin, as aforesaid, after the date of said settlement of August 11, 1870, were issued and sold and disposed of by the said East Tennessee, Virginia and Georgia Railroad Company, for the uses and purposes therein mentioned, and were negotiated and sold in the city of New York and in Europe, but mostly in Europe, to *bona fide* purchasers, for full value, but less than par, and the proceeds thereof were used to replace moneys borrowed for and used in the purchase of the bonds of the State of Tennessee, delivered to said State in settlement of the said claim of indebtedness of said East Tennessee and Virginia Railroad Company, and the East Tennessee and Georgia Railroad Company, which bonds and coupons of the State of Tennessee, so purchased and used, were bought in open public market, in the city of New York, at the prevailing market rates, but below their par value, and were delivered to and accepted by the State of Tennessee, through its comptroller, in satisfaction of said debt claimed to be due the State from the said companies as aforesaid, on account of internal improvement bonds of said State originally loaned and advanced to the said East Tennessee and Virginia, and the East Tennessee and Georgia Railroad Companies; that the said Charles Burckhardt, Henry Saladin, Charles Diggelman, Victor Fauche and Caroline Tschraur, purchased and still hold of said bonds the sums named in their said answer respectively, and that the said respondents whose names are in the list marked

21 "Exhibit No. 1," attached to said answer, each purchased and still holds of said bonds the several amounts set opposite their respective names in said list, and that they were and are *bona fide* purchasers and holders of said bonds, having bought the same in good faith and for full value, but below par. That the said Burckhardt and others requested the said Calhoun, Wilson and Iselin, trustees, as aforesaid, under the said mortgage, to take the necessary steps to protect the interest against
22 the claim of the complainant and other holders of Tennessee State bonds, by making themselves defendants in this case, which the said Calhoun, Wilson and Iselin declined to do.

Third.—That the Knoxville and Ohio Railroad Company, a corporation duly created and organized under the laws of the State of Tennessee, has acquired the legal and beneficial title and possession of the Knoxville and Kentucky Railroad, and
83 of all the property pertaining thereto, formerly belonging to the Knoxville and Kentucky Railroad Company, by virtue of the judicial proceedings set forth in the answer herein, filed by the said the Knoxville and Kentucky Railroad Company, and of the Knoxville and Ohio Railroad Company, a record of the proceedings of which it is agreed may be read herein; that the Knoxville and Ohio Railroad Company having thus acquired title to the said prop-
24 erty, did, on the 1st day of January, 1876, enter into a certain indenture or deed of trust and mortgage, as party thereto of the first part, to and with Richard T. Wilson, a citizen of the State of New York, and William T. Walters, a citizen of the State of Maryland, parties of the second part, which was duly executed and delivered, acknowledged and registered, as required by the laws of the State

of Tennessee, a true copy whereof is attached to the answer of the said William T. Walters, herein, marked "Exhibit No. 1;" that the whole amount of bonds mentioned and described in the said deed of trust and mortgage, have been duly issued by the Knoxville and Ohio Railroad Company, and have been sold for full value, but below par, in the public and open market, in the city of New York and elsewhere, to *bona fide* purchasers, and are now outstanding.

Fourthly.—The stipulation of even date herewith signed by George Hoadly, solicitor for complainant, and Stanley Matthews, solicitor for respondents, in the five cases brought in the Middle and Western Districts of Tennessee, against the Louisville and Nashville Railroad Company and the Nashville and Decatur Railroad Company, and others, is hereby made part of this stipulation, as fully as if herein again set forth, and so far as the agreements and recitals thereof are applicable to these cases they are to bind us in these cases.

29 IN THE
CIRCUIT COURT OF THE UNITED STATES,
FOR THE MIDDLE DISTRICT OF TENNESSEE.

Calvin Amory Stevens, who sues for himself and other holders of the Bonds of the State of Tennessee issued to the Louisville and Nashville Railroad Company,

vs.

The Louisville and Nashville Railroad Company
30 and John B. Smith.

Same, upon Bonds issued to the Tennessee and Alabama Railroad Company,

vs.

The Nashville and Decatur Railroad Company, Charles Diggleman, and others.

Same, upon Bonds issued to the Central Southern Railroad Company,

vs.

31 Same defendants.

IN THE CIRCUIT COURT,
FOR THE WESTERN DISTRICT OF TENNESSEE.

Same, upon Bonds issued to the Memphis, Clarksville and Louisville Railroad Company,

vs.

The Louisville and Nashville Railroad Company and John B. Smith.

32

Same, upon Bonds issued to the Memphis and Ohio Railroad Company,

vs.

Same Defendants.

IN EQUITY.

It is hereby stipulated and agreed by and be-

tween the parties hereto, being parties to the above- 33
entitled suits, in order to avoid the trouble, expense and delay of formal proof, that the following may be taken and held to be proven as facts in each of said causes, so far as applicable thereto, but subject to all proper objections for incompetency or irrelevancy.

1. The stipulation dated August 14th, 1879, signed by E. L. Andrews, solicitor for complainants, and Ed. Baxter, solicitor for respondents, is to be taken as part of this agreement as fully as if recited and 34
again set forth herein.

2. Either party shall be at liberty to use any or all of the depositions taken in any or all of the cases now pending in the Circuit Courts of the United States for the Eastern, Middle and Western Districts of Tennessee, brought by the said complainant, or by him and others, to enforce the lien reserved by the internal improvement laws of said State against divers railroad companies, so far as the testimony therein contained may be compe- 35
tent and relevant herein. A list or statement of such depositions shall be furnished by the party using the same to the other at the hearing, and printed copies of such depositions shall be filed in any case in which the same may be used.

3. Either party shall be at liberty to file in any of these causes a copy of the whole or any part of a printed compilation of laws, records and documents made under the complainant's directions, containing 390 printed pages, and either party may 36
read as evidence, without further proof, such parts thereof as they may see fit, subject to all proper objections, on the ground of incompetency or irrelevancy.

4. It is further agreed that the Louisville and Nashville Railroad Company is a body corporate and politic, chartered by the acts of the General

37 Assembly of the Commonwealth of Kentucky. The right of way to construct its railroad from the line between the States of Kentucky and Tennessee to Nashville was granted it by the acts of the General Assembly of Tennessee, but it has never been incorporated by said State, and, therefore, is not a citizen thereof, but of the State of Kentucky; that the object and purpose of the creation of said corporation by the said charter and laws, was the construction, completion, and there-
38 after the operation and management, among others, of a line of railway for the transportation of passengers and freight from the city of Louisville, in the State of Kentucky, to the city of Nashville, in the State of Tennessee. For this purpose such powers were granted to said corporation as are declared in the several charters and acts of incorporation of Kentucky, and acts giving it a right of way and to tranact business in the State of Tennessee. The said corporation was authorized to borrow
39 money for the purposes of the enterprise. It was likewise authorized to impose liens and execute mortgages upon its property to provide for and insure the payment of its liabilities.

That all bonds of the State of Tennessee loaned to railroad companies under the act of the General Assembly of the State of Tennessee, passed February 11th, 1852, and the acts amendatory and supplementary thereto, including those loaned to the Louisville and Nashville Railroad Company, were
40 sold in the market as straight Tennessee State bonds, as distinguished from bonds of railroad companies, indorsed or guaranteed by the State; that what were known in the market by the public as straight Tennessee bonds, the said bonds, including those loaned to the Louisville and Nashville Railroad Company, sold before the war, at the following prices:

41

42

While bonds of other descriptions, on which the railroad companies were bound as principals, and the State of Tennessee as surety, were sold at the following prices:

43

That the Louisville and Nashville Railroad Company received from the State of Tennessee her six per cent. coupon bonds, at the times and in the amounts following, and none others, and at no other dates, namely: 44

Received April 30, 1858, 50 bonds amounting to $50,000.

Received April 30, 1858, 150 bonds amounting to $150,000.

Received April 30, 1858, 100 bonds amounting to $100,000.

45 Received July 15, 1859, 150 bonds amounting to $150,000.

Received April 20, 1861, 5 bonds amounting to $5,000.

Said bonds to the amount of five hundred and sixty thousand five hundred dollars, were received by or on behalf of the Louisville and Nashville Railroad Company, through properly appointed officers, and were by said company negotiated and sold in pursuance of law, to *bona fide* holders, but
46 none were received prior to April 30, 1858. The proceeds of these bonds were applied as directed by the laws under which they were loaned to said railroad company; that the State of Tennessee has failed to pay to the holders of its bonds and coupons thereon, representing interest accruing thereon, which became due on the first day of July, 1876, and all falling due since that date, and is in default therefor; that on May 5, 1865, the General Assembly of the State, by joint resolution, ap-
47 pointed the comptroller, secretary of state, attorney-general, and commissioner of public works, a board to make a settlement with the Louisville and Nashville Railroad Company, and if a satisfactory settlement could not be obtained, the governor was authorized to have instituted such legal proceedings as might be necessary to protect the interests of the State. On the 18th of November, 1865, said commissioners reported to the legislature that they had effected a settlement: that the bonds loaned
48 said company by the State amounted to $560,000, and the overdue interest thereon to $147,131.25; that the company had proposed to pay the entire principal in straight six per cent. coupon bonds of the State and the interest in coupon bonds of the State then due. The commissioners say: Believing it to be manifestly for the interests of the State to call in this large installment of its indebetedness

and believing, moreover, that the company had a 49
right under the law regulating the sinking fund to
pay off its entire indebtedness in the bonds of the
State, your commissioners accepted the proposal,
and executed to the company a receipt dated No-
vember 17, 1865, for $707,631.25 in bonds and cou-
pons of the State being the total indebtedness of said
company to the State of Tennessee, on account of
the bonds of the State received in aid of the con-
struction of said road and the bridge across the
Cumberland river." True copies of said resolution 50
and report are annexed to the answer filed by John
B. Smith in the first of said cases; that the said
railroad company actually delivered said bonds
and coupons as in said receipt is recited; that at
the time this settlement was made in 1865, the State
was in default for non-payment of the interest on
its bonds from July, 1861; that the bonds and
coupons paid by the Louisville and Nashville Rail-
road Company to the State of Tennessee in the said
settlement, were not the identical bonds and cou- 51
pons originally advanced and loaned to said com-
pany, and by it negotiated and sold, but that the
same, in part at least, were other bonds and cou-
pons of the State of Tennessee; that, at the time
said settlement was made, the war had but recently
prior thereto definitely closed. During the period
of actual military operations, the railroads had
been the prize of contending armies, as instru-
ments of offense and defense. In the course of the
struggle, they had been stripped of their equip- 52
ment, and parts of them destroyed and re-
paired, and, in some cases, built and extended, by
the United States Government, to fit them for mili-
tary use, but so that when they were finally restored,
on or about August, 1865, to their owners, they were
destitute of rolling stock, cars, machinery, shops,
and tools, and almost everything needed for an

equipment, nearly everything of that description then in actual use upon the roads being the property of the United States, furnished and employed for its military uses. This they were permitted to purchase and did so in pursuance of executive orders issued by the President of the United States in September and October of that year, but being unable to pay cash, gave their obligations for the purchase money payable in installments and bearing interest. The roads themselves, their road beds, tracks, trestle-works, bridges, and permanent works of every description, were, to a greater or less extent, out of repair, in need of restoration in some cases in a state of actual dilapidation. Business of every kind had been largely suspended by the war, except military transportation, and now, that employment ceased with the cessation of hostilities, but the fruits of peace, in the revival of industry and trade, could only come with the lapse of time, and the gradual accommodation of the community to the new order of things. The general result was that the railroads required large sums of money to put them in a condition to earn an income, and, after that, would have to wait the slow operation of general causes upon the social condition of the people, before any revival of trade would renew their sources of revenue. In the meantime, a large arrearage of debt, for unpaid interest, had accumulated by reason of the default during the whole period from July, 1861, both of the State and the railroad companies, in consequence of which the State securities had become discredited in the markets of the world.

It is, however, admitted that the said facts of depreciation of property and credit are true to a less extent of the main line of the Louisville and Nashville Railroad between Louisville and Nashville, than of the other railroads in Tennessee; that about

the time said settlement was made with the Louis- 57
ville and Nashville Railroad Company, to wit: on
November 8th, 1865, the General Assembly of the
State of Tennessee, by joint resolution appointed a
joint committee to examine into the condition of
the sinking fund; that every holder of bonds of the
State of Tennessee originally issued under the
internal improvement laws, including the com-
plainant, so far as he then owned said bonds, and
his predecessors in ownership of the bonds since ac-
quired by him, accepted the provisions of the act of 58
November 23, 1865, delivering to the State the
overdue and unpaid coupons of said bonds, which
had matured from July 1, 1861, to January 1, 1866,
and receiving in exchange therefor the said State
bonds, authorized thereby; that, after the proceed-
ings and legislation of the State of Tennessee, here-
inbefore and in the pleadings set out, including
said settlement with the Louisville and Nashville
Railroad Company of November 17, 1865, and the
passage of said act of November 23, 1865, the 59
market price of the bonds of the State of Tennessee,
in the city of New York, rose from about fifty
cents on the dollar in the month of March in that
year to ninety-two cents on the dollar in the month
of December in the same year; that many of the
railroad companies were unable to provide the
means to meet the interest falling due on the 1st
of July, 1867, which by law they were bound
to provide, and failed to do so, to the extent of
nearly $800,000, but that the State nevertheless 60
paid the whole amount of interest falling due on
that date on its bonds to the holders thereof; that all
the holders of the bonds of the State, including the
complainant and his predecessors in the ownership
of any he now holds, and those associated and act-
ing with him in the prosecution of this and similar
suits, and their predecessors in such ownership,

61 accepted the provision of these acts and funded their overdue coupons, and received payment of current accruing interest after January 1, 1874, to January 1, 1876, in accordance with the terms of the act of the General Assembly of the State of Tennessee, passed March 17, 1873, and particularly that they registered their bonds in compliance with the provisions of the ninth section of said act; that in the meantime, on the tenth day of November, 1868, the Governor of the State had informed the
62 General Assembly that six railroads in the hands of Receivers were at that time indebted to the State on interest account due July 1, 1868, one million one hundred and twenty thousand nine hundred and ninety-six dollars and eighty-six cents, and stated that he would have seized two other roads for failure to pay the July interest of that year, and placed them in the hands of Receivers, but that he had learned by experience that to do so would only entail increased burdens upon the State
63 Treasury, and expressed the opinion that the interest of these roads, as well as that of the State, required that they should be sold, and the proceeds thereof applied to the reduction of the State debt. In the same message, he said:

"Leading gentlemen, connected with important railroads largely indebted to the State, are asking for authority to issue second mortgage bonds, with a view of exchanging them for State bonds. Thus purchasing State bonds by the avails of these sec-
64 ond mortgage bonds, the debt now due by the State would in like amount be transferred to these railroad companies, and so the State would be relieved of a burden of several million of dollars of debt now resting upon it. I regard this proposition with approval, and advise its adoption by the Assembly. The payment of large debts now due from the roads alluded to, and the sale of the roads already

in the hands of Receivers, would reduce the State 65
liabilities at least one-third."

That at the session of the General Assembly in 1871, the Governor, in his message to that body, stated that under said act of February 25, 1869, as amended by the act of January 20,1870, ch. 45, over eight million of dollars in the bonds of the State had been retired and canceled; that other roads had purchased and were then purchasing bonds with which to cancel their liabilities to the State under the said acts, and in order to prevent further 66
delay on the part of solvent roads that had not retired their indebtedness to the State under said act, recommended that the act be either repealed to take effect at some future time not remote, or that its provisions be so amended as that the roads be required to pay all accrued interest as well as the sinking fund not theretofore paid in. In the same document the Governor also stated that but three of the delinquent railroads remained unsold, and added: "It will be a gratifying result when the 67
State is entirely divorced from the railroad system. And, although the sales will not realize all that was desired, and leave a large debt to be provided for, yet the internal improvement system of Tennessee has added millions to her wealth and diffused such energy and enterprise into every class of society, that no intelligent man can regret the policy which inaugurated the system, notwithstanding a large amount of appropriations made since the war have been improperly expended." 68

That the several railroads companies to whom loans of internal improvement bonds had been made and the State of Tennessee dealt together under the said acts of February 25, 1869, and of January 20, 1870, according to the terms thereof (except as to settlements made prior to the passage of said acts), the various railroad companies who were able

69 to do so, and who were on that account called solvent, purchasing in the open market, at the market price, bonds of the State of Tennessee, without discrimination as to their description, or on what account, or to whom issued, and in order to raise the means so to do, the said railroad companies issued their own bonds, secured by mortgages on their railroad property as a first lien thereon, or in accordance with the said acts of 1869 and 1870, and the same were sold in the markets of
70 this country and of Europe, to purchasers for value, to the amount of many millions of dollars, now outstanding ; and that those railroads, known as delinquent railroads, the corporations owning which were not able thus to liquidate their indebtedness to the State, were sold by the authority of the State, by virtue of judicial decrees, rendered in a proceeding instituted and prosecuted by the State under and according to the provisions of the act of December 20, 1870, a printed copy of the record of
71 which either party is at liberty to file in said causes, and to use as evidence so far as relevant and competent ; and the purchasers thereof paid for the same, as by said act and decree they were authorized to do, in any bonds of the State.

That by virtue of said dealings and transactions, and in consequence thereof, the result, in regard to the reduction of the public debt reached, was as follows: The total bonded debt of the State, including $13,782,000 of funding bonds issued under
72 the acts of 1866, 1868 and 1873, amounted to $49,173,316.66. Of this, $29,251,250.00 represented the amounts of internal improvement bonds loaned to railroad companies, but not including the unpaid interest thereon, embraced in any series of funding bonds. The amount of $28,163,016.66 have, under the various acts aforesaid, been surrendered and cancelled ; and of them $16,265,000 were internal

improvement bonds loaned to railroad companies, 73
and $4,326,000 were funding bonds under the acts of 1866 and 1868. The account between the State and the two descriptions of railroads, is as follows:

First.—Defaulting railroads sold:

Bonds issued	$14,628,000.00
Int. funded, 1866	1,122,306.00
Int. unpaid, July, 1870	3,331,163.12
U. S. claims assumed	511,560.00 74
Total	$19,593,029.12
Amount realized by sale	6,698,000.00
Loss to State	$12,895,029.12

Second.—Roads which have settled their indebtedness:

Bonds issued	12,742,000.00 75
Int. funded January, 1866	1,850,768.00
Sinking fund paid	493,306.00
Unaccounted for	1,255,700.00

The particulars of which are truly stated in Exhibit No. 5 to the answer of John B. Smith, in the fourth of said cases; that, during the whole period of these transactions, from and including the settlement between the State and the Louisville 76
and Nashville Railroad Company, beginning in May, 1865, and during the whole progress of this legislation, and of the liquidation, arrangements, and settlements authorized and required by it, and of the dealings between the railroad companies and the State, and of the railroad companies in borrowing money on the security of mortgages on

77 their property, on the faith that all prior liens on account of the loans by the State of internal improvement bonds had been thereby removed and discharged, the holders of the bonds of the State of Tennessee, in general, had knowledge of all that was taking place; the facts themselves were public, historical, and notorious, and the holders of Tennessee State bonds, in the year 1870, formed a voluntary organization, represented by a committee, for consultation and co-
78 operation in matters of common interest, and kept themselves well advised of each step in the history of the business; and on or about May 1, 1870, said bondholders, through their committee, of which J. J. Donaldson, Esq., was Chairman, obtained a legal opinion from Hon. Henry E. Davies and Noah Davis, eminent counsel of the City of New York, affirming that they were owners of a lien under the act of 1852, upon each railroad, for the specific payment of the identical bonds issued to
79 that railroad company, by virtue of a contract, protected by the Constitution of the United States; which opinion was printed in pamphlet form, and not otherwise, and circulated among holders of Tennessee State bonds and others. That said bondholders took no action upon said opinion, and their committee ceased to exist in 1873. That, in 1877, a similar organization was formed of Tennessee State bondholders, and has been kept up ever since, and that the present suit, and other similar
80 suits now pending, are prosecuted in the name of the complainants, by a committee of such organization.

That at no time did the said holders of Tennessee State bonds, or any one of them, including the complainant or those associated and acting with him in the prosecution of this and similar suits, ever make any demand upon any railroad com-

pany for the payment of any interest on the said 81
bonds, or receive from any railroad company payment of any coupon, or make any objection to any of the acts of the State of Tennessee, inconsistent therewith, or object to the passage thereof, or oppose any payment, settlement, and liquidation, by any railroad company, of its indebtedness to the State, until in May, 1877, at Memphis, in the Circuit Court of the United States, and in April, 1878, at Washington City, in the Supreme Court, it was contended by pleadings and argument, in the case 82
of *Duncan et al.* v. *Merian et al.*, involving the foreclosure of the Mobile and Ohio Railroad, and the marshaling of liens thereon, on behalf of said committee, that the holders of said State bonds were and are entitled to a prior lien, in accordance with the said opinion of said Judges Davies and Davis; that on the 16th day of January, 1878, there was held, in the city of New York, a meeting of holders of Tennessee State bonds, the call for which was signed by the complainant, and others 83
with whom he was then acting, and with whom he is still associated, and who, jointly with him, are prosecuting this and similar suits—namely, Eugene Kelly, Peter Geddes, John T. Terry, and others—and at which they were present and participating, and at which the following preamble and resolutions were adopted, viz:

"*Whereas*, On the 8th March, 1877, at a meeting 84
between a committee of five members of the Tennessee legislature (of which Col. John H. Savage was chairman), and a committee of arbitration (of which Mr. George S. Coe was chairman), to whom had been referred the question of a fair and equitable adjustment between the Southern States in default and their bondholders, the debt of the State of Tennessee was fully discussed, with a view of ascer-

taining and determining what a fair and equitable adjustment of it would be; and,

"*Whereas*, At the conclusion of the conference between the committee of the Tennessee legislature and the committee of arbiters, the committee of arbiters made an award that the debt of the State of Tennessee ought to be readjusted by the issue of new bonds, at the rate of sixty per cent. of the total amount of the debt and interest, the new bonds to bear interest at six per cent., payable semi-annually, and the coupons for interest to be made receivable for all taxes and dues to the State; and,

"*Whereas*, The session of the legislature expired by constitutional limitation a few days after the award of the arbiters was rendered, and there was not time to enact a law to give it effect; and,

"*Whereas*, It was very generally understood than an extra session of the legislature would be convened to accept a proposition from the bondholders to compromise the State debt, on the terms of the award of the committee of arbitration, and to enact a law to fully carry it out, the holders of a very large amount of bonds of Tennessee did make and send to the governor propositions of compromise on the terms of said award, and the governor did thereafter convene the legislature in extra session to consider said proposition; and,

"*Whereas*, During the sitting of the legislature, the intervention of other parties, proposing and advocating before it other and different terms of settlement than those considered by the committee of the legislature and the committee of arbitration, and awarded by the latter committee, and agreed to by the bondholders, was prejudicial to the interests of the State of Tennessee, and to her creditors, in so far as it has delayed a settlement; and,

"*Whereas*, The bondholders of Tennessee had neither an agent nor other person to represent

them before the legislature, but confided in the leg- 89
islature, and fully expected that the senators and representatives of the people of Tennessee would ratify and confirm the award of the distinguished and disinterested gentleman who acted as a committee of arbitration, and accept the proposition of the bondholders made in accordance therewith, unhesitatingly; therefore,

"*Resolved*, That efforts made by any person who purported to represent the bondholders of Tennessee were entirely unauthorized, and that the declara- 90
tion alleged to have been made at Nashville, that a settlement could be effected with the bondholders upon a lower basis than that proposed by the committee of arbitrators, of which Mr. George S. Coe is chairman, has no foundation in fact, so far as it relates to the great body of bondholders.

"*Resolved*, That while we deplore the attitude assumed by the legislature, while assembled at Nashville, in December, toward the bondholders, we believe that it resulted from the influence and 91
unwarrantable interference of other parties than real bondholders, or representatives.

"*Resolved*, That we have an abiding belief that the people of the great State of Tennessee will not, by the rejection of honest claims which they are abundantly able to pay, suffer a stigma long to rest upon them; the effect of which will be to paralyze the prosperity of the State, subvert its best interests, and engender that demoralization which must ultimately result in losses to its citizens, even 92
far greater than to its creditors.

"*Resolved*, That the people of Tennessee be urged to adopt such legislation as will uphold the honor of the State, and evince proper regard for the high integrity which has hitherto characterized her citizens.

"*Resolved*, That a committee of five be appointed,

93 consisting of Eugene Kelly, John T. Terry (of E. D. Morgan & Co.), J. G. K. Duer (of James G. King's Sons), Peter Geddes (of Geddes & Smith), and Dr. R. S. Moran—Eugene Kelly to be chairman—to take such action as, in their judgment, may be to the interest of the bondholders; but with the understanding that no settlement less favorable than the award of the committee of arbitration be accepted.

And this respondent says that on the 11th day of
94 December, 1877, the complainant, C. Amory Stevens, had addressed, by telegraph, from New York, to the Governor of Tennessee, a communication, which was laid before the General Assembly then in session, as follows:

"NEW YORK, Dec. 11, 1877.

"GOVERNOR JAMES D. PORTER:

95 "I am a large holder of Tennessee bonds, which have been held for years strictly for investment account. I was a signer of the former petition, sent you through the committee of arbitration; and while I would prefer to have that proposition accepted, yet, if it would require a revenue bill that is deemed by the Legislature to be higher than the State can afford to pay without seriously retarding the prosperity of the people, I prefer to change the original offer, and hereby do change it. I propose
96 to take fifty cents on the dollar. I think this dispatch represents the sentiments of most of the investment holders. They recognize the embarrassed condition of the State, growing out of the war, and are willing to meet the situation in a spirit of liberality, and now ask the Legislature, through your excellency, to reciprocate this feeling, and make a settlement without further delay.

"Please submit this to the Legislature for its ac- 97
tion.

"THE ESTATE OF CALVIN STEVENS,
C. AMORY STEVENS,
"*Trustee.*"

That the public debt of the State of Tennessee, which was the subject of these communications and propositions, amounted at that time, as reported to the General Assembly by the Governor, in the same message which transmitted the proposition made 98
through the committee of arbitration, to twenty-three millions two hundred and twelve thousand six hundred and six dollars, on the first day of January, 1878, and which consisted partly of bonds issued under the internal improvement acts of 1851, 1852, and the amendments thereto, and those issued for past due interest, and known as funding bonds, and partly of bonds of the State issued for turnpike, capital and agricultural bureau purposes, and the purchase of the Hermitage. 99

That on the 21st day of February, 1868, the Legislature of the State of Kentucky passed an act entitled "An Act to amend the charter of the Louisville and Nashville Railroad Company, approved March 5, 1850," a true copy of which act is annexed to the answer of John B. Smith in the *first* named of said causes.

That on or about the first day of April, 1868, the Louisville and Nashville Railroad Company, in pursuance of the authority conferred by said act, 100
which had been duly accepted by it, executed and delivered its certain indenture of mortgage of that date, made by and between said company, a duly organized corporation of the State of Kentucky, party of the first part, and James Punnett and Junius B. Alexander, trustees, party of the second part, a true copy of which, except the signatures

and acknowledgment, is annexed to the answer of John B. Smith, in the *first* of said causes, as Exhibit No. 4, thereof; that since the execution and delivery thereof, as aforesaid, the said James Punnett, named therein as one of the grantees, has deceased, and this respondent, a citizen of the State of Kentucky, has been duly appointed in his stead, and has accepted said trust, and has been, so far as necessary, acting in execution thereof; that of said eight million loan, authorized and secured by said mortgage, there have been issued and are now outstanding bonds of said Louisville and Nashville Railroad Company to the amount of seven million and fifty-nine thousand dollars, and of that amount two million four hundred and thirty-three thousand dollars were used by the purchase of Tennessee State bonds, for the purpose of paying the State of Tennessee in part the indebtedness claimed to be due from the Memphis and Ohio and the purchase money of the Memphis, Clarksville and Louisville Railroad Company, and which were so used in pursuance of the terms and plan, according to which said companies, under the authority of the laws of Kentucky and Tennessee, have become consolidated with or owned by the Louisville and Nashville Railroad Company; the said consolidation and purchase were contemplated, as part of its purposes, by said act of the General Assembly of the Commonwealth of Kentucky, of February 21, 1868, but the same was not consummated until after the passage of said acts of the General Assembly of Tennessee, of 1869–70, heretofore referred to, and that the bonds of said Louisville and Nashville Railroad Company, of said eight million loan secured by said mortgage, the proceeds of which were used in the purchase of Tennessee State bonds for the purposes aforesaid, were issued and negotiated in the city of New York, during the year 1870, and the

Tennessee State bonds, purchased therewith, were 105
bought in New York, in open market, at market prices then current, during the period from January 1, 1870, to May 31, 1871; that said deed of trust and mortgage was executed and has been duly registered in accordance with the laws of Kentucky and Tennessee.

That on or about the 1st day of November, 1873, the Louisville and Nashville Railroad Company, a corporation authorized thereto by the laws of Kentucky and Tennessee, executed and delivered its in- 106
denture of mortgage of that date to Henry F. Vail, a citizen of the State of New York, and to said John B. Smith, a true copy of which, except the signatures and acknowledgment, is attached to the answer of John B. Smith in the *first* of said causes as Exhibit No. 5, which mortgage was duly registered in the proper offices in the city of Louisville, and in the counties in which said railroad lies; that soon after the execution and delivery of this deed of trust or mortgage the Louisville and Nashville Railroad 107
Company negotiated, issued and sold of the bonds thereby secured, two millions of dollars for full value, but less than par, to purchasers thereof; that the said The Louisville and Nashville Railroad Company, having purchased and acquired the title to the railroad and other property of the Memphis, Clarksville and Louisville Railroad Company, and the same having become by said purchase a part of its line and property on the 15th day of July, 1872, by a certain indenture of that date made 108
between the said Louisville and Nashville Railroad Company, a corporation created, organized and existing by and under the laws of the State of Kentucky, and likewise existing and recognized and possessing chartered rights and privileges by and under the laws of the State of Tennessee, party of the first part, and this respondent, of Louisville, in

109 the State of Kentucky, and Junius B. Alexander, of the city of New York, parties of the second part, a true copy of which, except the signatures and acknowledgment thereof, is attached to the answer of John B. Smith, in the *fourth* case above named, as Exhibit No. *one* thereof; that said mortgage or deed of trust was duly executed by the parties thereto, in conformity with the law of the States of Tennessee and Kentucky in that behalf, and was duly registered and recorded as required thereby;
110 that all said twenty-five hundred bonds of two hundred pounds sterling, with coupons attached, as described in said mortgage, were negotiated and sold, and the proceeds thereof received by the Louisville and Nashville Railroad Company, in the city of London, in England, for full value, but less than par, to purchasers thereof.

That there was delivered to the Memphis, Clarksville and Louisville Railroad Company, on account of their railroad, various internal im-
111 provement bonds of the State of Tennessee; that said bonds, to the amount of one million five hundred and eighty-two thousand dollars, were received by or on behalf of the Memphis, Clarksville and Louisville Railroad Company, either through its own officers, or by Receivers in possession of its railroad, under appointment of the governor of the State, and were by said company, or by said Receivers, negotiated and sold, in pursuance of the law, to *bona fide* holders, but none prior to
112 March 18, 1858, and the proceeds of said bonds were applied as directed by the laws under which they were issued; that of said sum of one million five hundred and eighty-two thousand dollars of State bonds, issued as aforesaid, in aid of the Memphis, Clarksville and Louisville Railroad, the amount of one million and forty-two thousand dollars thereof was issued to said company, in various

sums and at different times, between the 17th day 113
of March, 1858, and the 21st day of February, 1861, and all were issued under the provisions of the act of February 11, 1852, and acts amendatory thereof; and that forty thousand dollars of said bonds were issued to said company on March 27, 1866, under the provisions of the acts of February, 8, 1854, amendatory of said act of February 11, 1852, and four hundred thousand dollars thereof were issued to G. T. Lewis, a receiver in possession of said rail-
road, by appointment of the Governor of the State, 114
between April 14, 1866, and June 13, 1866, as provided in the act of January 18, 1866, to amend said act of February 11, 1852, and one hundred thousand dollars thereof, as authorized by the act of May 24, 1866, to incorporate the Tennessee Pacific Railroad Company, and for other purposes, by the terms of which last mentioned act the governor was authorized to execute a bond for the purchase of railroad machinery, cars, and all other material purchased for the use and benefit of the Memphis, Clarksville 115
and Louisville Railroad from the United States Military Railroad Department at Nashville, of the United States; that the State of Tennessee has failed to pay the interest accruing on its outstanding bonds since the 1st day of July, 1876, having failed to pay the coupons falling due on that day; that the Memphis, Clarksville and Louisville Railroad Company did not pay interest accruing upon its said indebtedness, but failed to do so, and to pay
the amounts required by the said several laws on ac- 116
count of the sinking fund, and became and was in default by reason thereof, so that it was claimed by the State that on the 1st day of January, 1871, the said Memphis, Clarksville and Louisville Railroad Company was indebted to the State, on account of said interest in arrear, in the sum of eight hundred and seventy-two thousand one hundred and twenty-

five dollars and ninety-two cents, besides four hundred and ninety-nine thousand six hundred and sixty-nine dollars and ninety cents, on account of the purchase of machinery, cars, and material from the United States, authorized as aforesaid by the act of May 24, 1866, making the aggregate of the indebtedness, claimed by the State, of that date, for which said company was liable to it, of two million nine hundred and fifty-three thousand seven hundred and ninety-five dollars and ninety-two cents.

That the bonds authorized by the act of the General Assembly of the State of Tennessee, passed February 1 1860, and called second mortgage bonds, were issued by said company, and negotiated; that they are the same referred to in the mortgage of the Louisville and Nashville Railroad Company, to the said John B. Smith, and the said Junius B. Alexander, of the 15th day of July, 1872, as having been purchased by the Louisville and Nashville Railroad Company, and by it conveyed to them.

That on the 1st day of June, 1871, the Memphis and Ohio Railroad Company, party of the first part, executed and delivered its certain deed of indenture of that date, to and with John B. Smith, of Louisville, in the State of Kentucky, and James W. Alexander, of the city and State of New York, parties of the second part, a true copy of which is attached to the answer of John B. Smith in the case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Memphis and Ohio Railroad, which deed, it is admitted, was duly registered according to the laws of the State of Tennessee; that said thirty-five hundred bonds, described in and secured by said deed and mortgage, were duly issued by said railroad company, negotiated and sold to *bona fide* purchasers, for full value, but at less than par, and

that the proceeds of the sale of the said bonds, 121
which were endorsed before negotiation by the Louisville and Nashville Railroad Company, were used to replace advances made by the said company for the Memphis and Ohio Railroad Company, and for the purchase of bonds of the State of Tennessee, which the State of Tennessee received in discharge of the indebtedness claimed to be due from said railroad company to it; and, afterward, the Memphis and Ohio Railroad Company was consolidated with the Louisville and Nashville Railroad Com- 122
pany, and the said mortgaged property became vested in the Louisville and Nashville Railroad Company, and that payments of interest accruing on the indebtedness of the Memphis and Ohio Railroad Company claimed to be due to the State of Tennessee, were regularly made by said Louisville and Nashville Railroad Company, then in possession of the Memphis and Ohio Railroad, as lessee thereof, to the State of Tennessee every six months from July, 1867, to July, 1871, each of which semi- 123
annual payments amounted to $71,883.30, and were made partly in cash, and partly in past due bonds and coupons of the State of Tennessee.

That, on the 1st day of July, 1870, the Nashville and Decatur Railroad Company entered into an indenture with Philo C. Calhoun, Richard T. Wilson, and Adrian Iselin, then and now citizens of the State of New York, parties of the second part, a true copy of which is filed as "Exhibit No. 2" to the answer of Charles Diggelman and others, in the 124
case of the complainant suing upon bonds of the State of Tennessee, issued in aid of the construction of the Tennessee and Alabama Railroad, which indenture was duly registered in pursuance of the laws of the State of Tennessee; that the Nashville and Decatur Railroad Company is a corporation of the States of Tennessee and Alabama, formed by

125 the consolidation of the Tennessee and Alabama Railroad Company, the Central Southern Railroad Company, and the Tennessee and Alabama Central Railroad Company; that the bonds of the Nashville and Decatur Railroad Company, secured by the said mortgage to said Calhoun, Wilson, and Iselin, were issued for the purposes therein authorized, and were negotiated and sold in the city of New York, to *bona fide* purchasers, for full value, but at less than par, and the proceeds there-
126 of used for the purchase of bonds and coupons of the State of Tennessee, bought in open public market in said city, at the prevailing market rates, and which were afterward delivered to and accepted by the State of Tennessee, at par, through its comptroller, in payment of and satisfaction for the debt claimed to be due the State from said companies, on account of said internal improvement bonds originally loaned to them; that the respondents,
127 Charles Diggleman, Marius A. Sorchan, and Sophie Milius von Willer, purchased and held the amount of bonds stated in their answer, respectively, in good faith and for full value, but at less than par; and that the several respondents, whose names are in the list, marked "Exhibit No. 1," attached to the said answer, each purchased and still holds of said bonds the several amounts set opposite their respective names in said list, in good faith and for full value, but at less than par; a true copy of one of said bonds is set out in "Exhibit No. 2" to said
128 answer. That the Nashville and Decatur Railroad Company made a settlement with the State of Tennessee, through its comptroller, of its debt claimed to be due to said State on account of the bonds of said State issued in aid of the construction of the Tennessee and Alabama, and the Central Southern Railroad, and the interest thereon, as made up and adjusted to January 1, 1871, in the sum of $2,702,-

997.10, as shown in "Exhibit No. 3" to said answer, 129
which is a correct copy of the original, which was paid in bonds and coupons which had been purchased at less than par.

"Exhibit No. 4," attached to the answer, is a true copy of the lease of the Nashville and Decatur Railroad Company to the Louisville and Nashville Railroad Company.

GEORGE HOADLY,
On behalf of Complainants.

STANLEY MATTHEWS, 130
On behalf of John B. Smith, Charles Diggleman, and others, Defendants.

131

132

UNITED STATES SUPREME COURT,

CALVIN AMORY STEVENS

vs.

THE CHICAGO, ST. LOUIS AND NEW ORLEANS RAILROAD COMPANY.

It is hereby stipulated that the record in this case, upon which the case is to be argued before the Supreme Court of the United States, shall be amended by adding thereto the following documents: Deposition of Adolph Schrieber; Deposition of S. B. McConnico; Replication; Petition of Illinois Central R. R. Co. to be made parties; Exhibit No. 1, to answer of Chicago, St. Louis & New Orleans Railroad Co.; Exhibit No. 2, to answer of Chicago, St. Louis & New Orleans Railroad Co.; Stipulation signed by Ed. Baxter and E. L. Andrews, and Stipulation signed by Geo. Hoadley and Stanley Matthews, of facts admitted in other cases by the counsel in such cases, which have been omitted by mistake in the record as heretofore made up and printed, and that upon filing this stipulation, the clerk shall amend the record on file and the printed copies by making such additions thereto, with like effect as if the matters so added had been originally included in the return made from the Circuit Court—the stipulation being made to avoid the necessity of correcting the record by means of *certiorari*—and by striking out deposition of Byrd Douglas, which is no part of this record.

JAMES FENTRESS,
Solr. for C., St. L. & N. O. R. R. Co.

E. L. ANDREWS,
Solr. for Complainant.